

**Pradeep Sharma Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/921713](http://sooperkanoon.com/921713)

**Court :** Delhi

**Decided On :** Oct-12-2011

**Judge :** Badar Durrez Ahmed

**Appellant :** Pradeep Sharma

**Respondent :** State

**Judgement :**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on 12.10.2011 CRL.A. 357/2008 - versus Appellant

RAVI KANT SHARMA

STATE

Respondent

Advocates who appeared in this case: For the Appellant : Mr Sushil Kumar, Sr. Advocate with Mr Sudarshan Rajan and Md. Qamar Ali For the Respondent : Mr Pawan Sharma, Standing Counsel for the State with Mr Kushagra Arora, Ms Laxmi Chauhan, Mr Harsh Prabhakar and Mr Mohit Mudgil

AND + CRL.A. 486/2008 - versus STATE Respondent Appellant

SHRI BHAGWAN SHARMA

Advocates who appeared in this case: For the Appellant : Mr Siddharth Luthra, Sr. Advocate with Mr T.S. Ahuja, Mr Madhav Khurana, Mr Neeraj Gaur & Mr Amit Sharma For the Respondent : Mr Pawan Sharma, Standing Counsel for the State with Mr Kushagra Arora, Ms Laxmi Chauhan, Mr Harsh Prabhakar and Mr Mohit Mudgil

AND + CRL.A. 396/2008 - versus Appellant

SATYA PRAKASH SHARMA

CRL.A. Nos.357/08, 486/08, 396/08, 338/08, 751/09 & 752/09

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STATE

Respondent

Advocates who appeared in this case: For the Appellant : Mr Sarfaraz Hussain with Mr Masood Hussain For the Respondent : Mr Pawan Sharma, Standing Counsel for the State with Mr Kushagra Arora, Ms Laxmi Chauhan, Mr Harsh Prabhakar and Mr Mohit Mudgil

AND + CRL.A. 338/2008 - versus STATE Respondent Appellant

PRADEEP SHARMA

Advocates who appeared in this case: For the Appellant : Mr D.B. Goswami with Mr S. Gaurav Saran For the Respondent : Mr Pawan Sharma, Standing Counsel for the State with Mr Kushagra Arora, Ms Laxmi Chauhan, Mr Harsh Prabhakar and Mr Mohit Mudgil

AND + CRL.A. 751/2009 - versus VED PRAKASH SHARMA Respondent Appellant

STATE

Advocates who appeared in this case: For the Appellant : Mr Pawan Sharma, Standing Counsel for the State with Mr Kushagra Arora, Ms Laxmi Chauhan, Mr Harsh Prabhakar and Mr Mohit Mudgil For the Respondent : Mr Mahavir Sharma

AND + CRL.A. 752/2009 Appellant

STATE

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- versus VED PRAKASH @ KALU Respondent

Advocates who appeared in this case: For the Appellant : Mr Pawan Sharma, Standing Counsel for the State with Mr Kushagra Arora, Ms Laxmi Chauhan, Mr Harsh Prabhakar and Mr Mohit Mudgil For the Respondent : Mr N. Hariharan with Mr Akshai Malik

CORAM: HON'BLE MR JUSTICE BADAR DURREZ AHMED HON'BLE MR JUSTICE MANMOHAN SINGH 1. 2. Whether Reporters of local papers may be allowed to see the judgment? To be referred to the Reporter or not? Whether the judgment should be reported in Digest?

YES YES YES

3.

BADAR DURREZ AHMED, J 1. These six appeals arise out of the common judgment dated 18.03.2008

delivered by the Additional Sessions Judge, Karkardooma Courts, Delhi whereby the appellants Ravi Kant Sharma, Shri Bhagwan, Satya Prakash and Pradeep Sharma were convicted for the offence punishable under Section 120-B read with Section 302 IPC for hatching a criminal conspiracy to kill Shivani Bhatnagar (deceased), who was actually killed by Pradeep Sharma in execution of the said conspiracy. The other accused were Ved Prakash Sharma and Ved Prakash @

Kalu, who were acquitted of all charges. The State has preferred two appeals (Crl. A. 751/2009 & Crl. A.

752/2009) in respect of Ved Prakash Sharma and Ved Prakash @ Kalu against the said acquittals. The impugned judgment dated 18.03.2008 was delivered in Sessions Case No. 14/2006 and arose out of the FIR No. 21/1999 under Sections 302/201/403/404/411/ 419/392/397/120-B/34 IPC registered at Police Station Mandawali on 23.01.1999.

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2.

All the convicted persons were, by an order dated 24.03.2008 passed by the said Additional Sessions Judge, Karkardooma Courts, Delhi, sentenced to imprisonment for life. Convict R. K. Sharma was also directed to pay a fine of ` 20,000/- while the other three convicts, namely, Shri Bhagwan, Satya Prakash and

Pradeep Sharma were directed to pay a fine of ` 10,000/- each. In default of the payment of the said fines, the convicts were directed to undergo an additional period of six months simple imprisonment.

3.

The main charge framed against all the six accused on 03.03.2003 was that all of them, during December, 1998 to January, 1999 at Delhi and other places, had agreed to commit the murder of Shivani Bhatnagar as she had threatened R. K. Sharma to spoil his life and career, after developing physical intimacy with him. As per the charge, it had also been agreed to dishonestly misappropriate a camera from her house as also a gold chain by having it removed from her dead body and also to destroy evidence regarding the commission of murder. The charge goes on

to state that in pursuance of the said criminal conspiracy, all the six accused aided and abetted the commission of the murder of Shivani Bhatnagar and that Satya Prakash and Pradeep Sharma went to Navkunj Apartments, Patparganj, Delhi on 23.01.1999 where the accused Pradeep Sharma falsely personated himself as Rajiv Bhatnagar and entered into B-42, Navkunj Apartments, the residence of Shivani Bhatnagar on the pretext of extending an invitation of marriage and thereafter, murdered her by strangulating her with a piece of electric wire and by stabbing knives on her neck at about 3/3:30 pm. It is further alleged in the charge that the accused Pradeep Sharma, thereafter, in pursuance of the said criminal conspiracy, removed a Kodak camera and certain documents from the said flat and a gold chain from the body of the deceased Shivani Bhatnagar. It is further alleged that the sim card corresponding to the mobile phone number 9811008825 was destroyed by the accused Satya Prakash. It was,

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therefore, alleged that in this manner all the six accused had committed an offence under Section 120-B read with Sections 302/201/403/404 IPC within the cognizance of the said Court. All the accused pleaded not guilty to the said charge as also to the other ancillary charges framed separately and claimed trial.

4.

Pradeep Sharma was additionally charged under Section 404 IPC for having

dishonestly misappropriated the gold chain by removing the same from the dead body of Shivani Bhatnagar. He was also charged under Section 419 IPC for having cheated by falsely personating himself to be Rajiv Bhatnagar and entering the same in the visitors register of Navkunj Apartments as also by representing himself to be Rajiv Bhatnagar to Shivani Bhatnagar at the time of entering the apartment. Sharma was, however, acquitted of this charge. Pradeep

5.

Pradeep Sharma and Satya Prakash Sharma were also jointly charged for

having committed an offence punishable under Section 302/34 IPC for having committed the murder of Shivani Bhatnagar in furtherance of their common intention to kill her. This charge was not accepted by the learned Additional Sessions Judge and they were not convicted under Section 302/34 IPC.

6.

Satya Prakash Sharma was also charged for having committed an offence

punishable under Section 201 IPC for allegedly causing the destruction of the sim card of mobile phone No. 9811008825 with the intention to screen himself and other offenders from legal punishment. This charge was also found to be not established and, therefore, Satya Prakash Sharma was acquitted of the same. The accused Ved Prakash Sharma and Ved Prakash @ Kalu were charged for having committed an offence punishable under Section 392/397 read with Section 34 IPC for having committed, in furtherance of their common intention, robbery of a Kodak camera and a gold chain belonging to Shivani Bhatnagar and at the time of the commission of the

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robbery, for having caused or attempted to cause death or grievous hurt to the said Shivani Bhatnagar. This charge was also not established and both the accused,

namely, Ved Prakash Sharma and Ved Prakash @ Kalu were acquitted of the same. A charge under Section 404 IPC in respect of the gold chain belonging to Shivani Bhatnagar was also framed against Ved Prakash Sharma. He was, however, acquitted of this charge.

7.

Lastly, a separate charge was framed against the accused Ved Prakash @ Kalu

under Section 411 IPC in respect of the Kodak Camera which was allegedly recovered consequent to a disclosure statement made by the said accused, who had allegedly dishonestly received and retained the same believing the same to be stolen property. The accused Ved Prakash @ Kalu was acquitted of this charge also.

PROSECUTIONs CASE: 8. Mrs Shivani Bhatnagar (deceased) used to work with Asian Age and in

February, 1997, she joined Indian Express in the capacity of Principal Correspondent. She was looking after the legal and constitutional implications covering investigating agencies such as the CBI and Intelligence Bureau and in this connection she used to cover the Prime Ministers Office in the year 1997. Her husband, Mr Rakesh

Bhatnagar was also a journalist and was working as a Legal Editor with the Times of India. Both of them were living together at B-42, Navkunj Apartments, Patparganj, Delhi. 9. On 22.01.1999, Rakesh Bhatnagars brother-in-law B. S. Bhatnagar, who was a

resident of Panchkula, had come to stay with them. At about 10 am on 23.01.1999, the said B. S. Bhatnagar left the house as he had to attend a meeting. Rakesh Bhatnagar also left the apartment at 12:15 pm and as a consequence, the only persons

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left in the said flat were Shivani Bhatnagar, their infant son Tanmay and maid servant Vally. At about 3:30 pm, Shivani Bhatnagar informed Rakesh Bhatnagar over the phone that one person from the Tribune, Chandigarh had brought an invitation card concerning the marriage of one Mr Adhikaris son. The phone was handed over to the said person, who had come with the invitation card and he also had a talk with Rakesh Bhatnagar and while doing so, he gave his name as Sharma.

10.

At about 5 pm, on the same day, Rakesh Bhatnagar received a phone call from his brother-in-law B. S. Bhatnagar, who told him that he was not able to open the door of the flat. Rakesh Bhatnagar asked him to make another attempt and at about 5:30 pm, the said B. S. Bhatnagar again made a phone call to Rakesh Bhatnagar and informed him that Shivani Bhatnagar had been stabbed in their apartment and that he should come immediately.

11.

Rakesh Bhatnagar left his office and on his arrival at the flat, he found that Shivani Bhatnagar was lying in the front bedroom of the said apartment and her neck was bleeding. A kitchen knife was found stuck to her neck and another knife was lying on her body. He also saw a tawa and a piece of yellow electric wire lying around her body. The articles lying in the three rooms were scattered and the almirahs were found to be ransacked. He also saw two cups of tea, namkeen, biscuits, an empty glass of water and one sweetmeat box lying near the sofa.

12.

In the meanwhile, one Parul, who was a news reporter with the Times of India, had informed the police control room at about 6:13 pm that at B-42, Navkunj Apartments, Patparganj, near mother dairy, a woman had been stabbed. The exact words used by her were:aurat ko chaku mar hua hai.

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This information was reduced to writing in the form of DD No. 13-A, Exhibit PW50/1. Thereafter, an FIR was registered at Police Station Mandawali, under

Section 302 IPC and SI Radhey Shyam arrived at the spot at about 6:35 pm. He was followed by Inspector Satya Pal Singh and the Crime Team. 13. Shivani

Bhatnagar was taken to Swami Dayanand Hospital, where she was However, on the persuasion of Rakesh

declared as having been brought dead.

Bhatnagar, the deceased was also taken to Apollo Hospital, where also, she was declared as having been brought dead. 14. The Crime Team lifted 10 chance prints from the sweetmeat box, wooden On

bowls containing namkeen and biscuits, cups of tea and the refrigerator.

25.01.1999, the Crime Team further lifted chance prints from a perfume bottle and lipstick. Blood samples were also seized.

15.

According to the prosecution, the person who brought the invitation and the

sweetmeat box and who had given his name as Sharma while speaking to Rakesh Bhatnagar over the phone, was the killer and he had entered Navkunj Apartments at 2:40 pm on 23.01.1999 after making an entry in the register maintained at the gate, giving his name as Rajiv Bhatnagar and his address as House No. 311, Tribune Colony, Chandhigarh and indicating that the apartment to be visited was B-42 for the purpose of an invitation. According to the said register, the said person departed from Navkunj Apartments at 15:10 hours.

16.

The post mortem examination of the dead body of Shivani Bhatnagar was

conducted by a Board of Doctors consisting of Dr R. K. Sharma, Additional Professor, Department of Forensic Medicine (AIIMS), Dr D. N. Bhardwaj, Associate Professor and Dr S. K. Gupta, Assistant Professor. As per the post mortem report, the following injuries were found on the dead body:-

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(i)

Stab wound measuring 2 cm x .75 cm (on the left front of chest) elliptical in shape. Stab wound elliptical in shape over left neck measuring 1.5 cm x 0.5 cm x 1 cm deep.

(ii)

(iii) Stab wound elliptical in shape over left neck measuring 1 cm x 0.5 cm over right neck. (iv) Stab wound measuring 1.5 cm x 0.5 cm situated 2 cm below right mandible and 9 cm from right mastoid over right neck. (v) Stab wound 2 cm x 0.75 cm x subcutaneous tissue deep over right neck situated 0.4 cm from midclavicular point.

(vi) Incised wound 1 cm superficial over right angle of mandible. (vii) Contused abrasion measuring 4 cm x 3 cm over front of the neck situated 12 cm below chin. (viii) Multiple contused abrasions over lower lobe neck and front of upper left chest. (ix) Multiple contused abrasions over lower right neck ranging from 0.2 cm x 0.3 cm in an area of 12 cm x 6 cm. (x) Ligature mark around the neck measuring in breadth 0.5 cm circumference 35 cm.

In their opinion, the cause of death of Shivani Bhatnagar was asphyxia as a result of ante mortem strangulation by ligature. Injuries No. 1-6 were caused by a sharp edged weapon and were said to be ante mortem in nature. As per the post mortem report, injuries No. 1 and 4 were sufficient to cause death of a person in the ordinary course of nature. 17. Appellant R. K. Sharma, an IPS officer, was posted as an Officer on Special

Duty in the Prime Ministers Office from 02.07.1997 to 23.04.1998. He was also posted as a Director (Vigilance), Air India at Mumbai from 23.04.1998 to 30.06.2000. In connection with his said duties, the appellant R. K. Sharma was said to be in

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possession of various secret/ classified documents. It is the prosecution case that Shivani Bhatnagar used to visit him in the Prime Ministers Office to gather information and their frequent meetings developed into intimacy. The appellant R. K. Sharma used to make frequent phone calls to Shivani Bhatnagar and vice versa. They also used to meet each other after office hours. It is the case for the prosecution that Shivani Bhatnagar had gone to London and remained there from 08.03.1998 to 07.06.1998 except for a period from 08.04.1998 to 29.04.1998, when she had returned to India as she was unwell. It is alleged that during her stay in London, she had confided in her roommate Smt. Saijal Shah (PW83) that she was deeply in love with the appellant R. K. Sharma and that she was also pregnant.

18.

It is the case of the prosecution that the relationship between the appellant R.

K. Sharma and the deceased Shivani Bhatnagar developed to such an extent that they had decided to get married after divorcing their respective spouses. Shivani

Bhatnagar gave birth to a male child in October, 1998 and she asked her sister Sevanti (PW26) to inform R. K. Sharma about the birth of a baby boy. However, by that time, the appellant R. K. Sharma was apparently no longer interested in Shivani Bhatnagar. This, allegedly, irked Shivani Bhatnagar and she allegedly threatened to ruin the life and career of R. K. Sharma by completely exposing him. Because of this, the

appellant R. K. Sharma is alleged to have made up his mind to eliminate Shivani Bhatnagar and, therefore, entered into a conspiracy with the co-accused to have her killed.

19.

It is through the call details of the deceased, appellant R. K. Sharma, Rakesh

Bhatnagar and the co-accused that, according to the prosecution, they were able to unravel the conspiracy behind the murder of Shivani Bhatnagar. It is the case of

the prosecution that the accused Shri Bhagwan played a key role in the conspiracy resulting in the murder of Shivani Bhatnagar. The cell phone No. 9811008825, which

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is alleged to have belonged to Shri Bhagwan, was also regarded as one of the most important pieces of evidence by the trial court. We shall deal with this in greater detail below. For the present, it is sufficient to note that as per the prosecution, Shri Bhagwan was well known to the appellant R. K. Sharma as Shri Bhagwan's father Onkar Sharma, a retired Haryana police officer, had worked under the appellant R. K. Sharma and that even after his retirement, the said Onkar Sharma continued to be in regular touch with R. K. Sharma. He continued to meet R. K. Sharma during 1997-1998, when R. K. Sharma was in Delhi and was posted as an Officer on Special Duty in the Prime Ministers Office.

20.

Another accused Ved Prakash Sharma was also connected to Shri Bhagwan

inasmuch as Shri Bhagwan's wife is Ved Prakash's sister. Ved Prakash @ Kalu, another accused, is the nephew of Shri Bhagwan being his sister's son. It is the case of the prosecution that both Ved Prakash Sharma and Ved Prakash @ Kalu were introduced to the appellant R. K. Sharma by Shri Bhagwan.

21.

Another accused Satya Prakash was also connected with Shri Bhagwan

inasmuch as he was a tenant of Shri Bhagwan at Gurgaon. It is alleged that Shri Bhagwan, Satya Prakash, Ved Prakash Sharma and Ved Prakash @ Kalu were all in the business of real estate and had operated from Gurgaon as well as Delhi. 22.

Another connection between the accused Satya Prakash and the appellant R. K.

Sharma was that during 1996, it was alleged that Satya Prakash being the sarpanch of village Utlodha, had invited the appellant R. K. Sharma, who was posted as DIG/ range, Rohtak to inaugurate a portion of the school at the said village. Even a plaque was fixed on the wall of the school on which the names of both R. K. Sharma and Satya Prakash are engraved. Photographs of the function were also collected by the police during investigation. It was also alleged that Satya Prakash visited R. K. Sharmas residence at N-57, Greater Kailash-I, New Delhi, when he was posted as an

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Officer on Special Duty in the Prime Ministers Office during the year 1997-1998. It is through Satya Prakash that accused Pradeep Sharma is connected with the rest of the accused and with the appellant R. K. Sharma. Pradeep Sharma is Satya Prakashes nephew (sisters son) and was also known to the other co-accused Ved Prakash Sharma, Shri Bhagwan and Ved Prakash @ Kalu.

23.

In January, 1999, the appellant R. K. Sharma was posted at Mumbai. He came to Delhi on 12.01.1999, ostensibly, to meet the Joint Secretary, MOCA and CVC. But, no such meeting actually took place. He stayed at Ashoka Hotel. On

13.01.1999, the co-accused Shri Bhagwan accompanied by Satya Prakash, Ved Prakash Sharma and Ved Prakash @ Kalu met him at Ashoka Hotel, allegedly in Shri Bhagwans white Esteem car bearing registration No. HR-26-G-9800. The appellant R. K. Sharma contacted Shivani Bhatnagar over the phone and called her to Ashoka Hotel. She came there along with her son. She was pointed out to the co-accused and her photograph was also given by the appellant R. K. Sharma to Satya Prakash. After Shivani Bhatnagar left Ashoka Hotel, R. K. Sharma went with all the accused in their Esteem car to Navkunj Apartments to show them the location of her flat.

24.

Thereafter, R. K. Sharma returned to Mumbai and attended a Vertical

Interaction Course for IPS at CIRT, Pune from 18.01.1999 to 23.01.1999, possibly with the intention to create an alibi. In order to monitor the events that were planned, he borrowed a mobile phone No. 9822028128 from his friend Suresh Kukreja and it is through this phone that R. K. Sharma had conversations with Shri Bhagwan.

25.

Satya Prakash, as a part of the agreed conspiracy, contacted his nephew

Pradeep Sharma and required him to liquidate Shivani Bhatnagar and to meet him at Sunder Nagar Market on 19.01.1999. On that date, Pradeep Sharma met Satya

Prakash, as arranged, and the other co-accused Shri Bhagwan was also present. Satya

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Prakash, once again, persuaded Pradeep Sharma to take up the task and allegedly assured him that he would be reinstated in HUDA, where he had worked and that the case pending against him in Chandigarh would be finished in case he did the job. It is alleged that Pradeep Sharma demanded a sum of ` 3 lacs in addition to the above mentioned favours and this was conveyed to Shri Bhagwan, who paid a sum of

` 50,000/- to Pradeep Sharma as advance. It is alleged that R. K. Sharma talked to Shri Bhagwan on 19.01.1999 and gave his approval for the deal.

26.

The job was to be done on 21.01.1999 in the afternoon. But the plan could not

materialize as Shivani Bhatnagar had left her house before the time fixed for the execution of the plan. It is alleged that R. K. Sharma called co-accused Shri Bhagwan on 22.01.1999 and they agreed that Shivani Bhatnagar would be killed on 23.01.1999 and necessary directions were given by Shri Bhagwan and Satya Prakash to Pradeep Sharma. On 23.01.1999, Pradeep Sharma reached Patparganj, opposite Mother Dairy, where he purchased one kilogram of besan ke laddu from a sweet shop and he along with Satya Prakash went in the Esteem car (belonging to Shri Bhagwan) to the said Navkunj Apartments. It is alleged that Pradeep Sharma was also carrying a piece of electric wire concealed on his person. Ved Prakash Sharma and Ved Prakash @ Kalu were also said to be present near Navkunj Apartments. They gave a green signal to the accused Pradeep Sharma, who entered Navkunj Apartments by pretending to be one Rajiv Bhatnagar from the Tribune, Chandigarh, who brought an invitation on behalf of one Adhikari for Mr Rakesh Bhatnagar. Pradeep Sharma, after entering the apartment and also having had a talk over the phone with Rakesh Bhatnagar, completed the task of killing Shivani Bhatnagar and left Navkunj Apartments. On their return journey, Pradeep Sharma informed Shri Bhagwan over the phone that the work had been done and who, in turn, conveyed the message to R. K. Sharma in Mumbai over the phone from the S. P. Office, Gurgaon. It is further alleged that on

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24.01.1999, Shri Bhagwan, Satya Prakash and Ved Prakash Sharma reached Mumbai and procured the contractual amount of ` 3 lacs from R. K. Sharma. 27. The prosecution, in order to establish its case against the accused, examined as many as 209 witnesses. The defence also examined 15 witnesses.

Submissions of Sh. Sushil Kumar, Senior Advocate, on behalf of the appellant R. K. Sharma 28. Mr Sushil Kumar, the learned senior counsel appearing on behalf of the

appellant R. K. Sharma submitted that initially this was a case of blind murder and there was no progress in the investigation for a period of over two years and then, all of a sudden, in June-July, 2002, the case was apparently solved. It was submitted that initially R. K. Sharma had been thoroughly interrogated and had gone out of the zone of being a suspect and then, all of a sudden, disclosure statements of the other coaccused were allegedly recorded and, thereafter, R. K. Sharma again became an accused. It was suggested by the learned counsel that there was great media hype with regard to this case and there were certain other influences which forced the prosecution to implicate R. K. Sharma. In this connection, it was submitted that the case was, first of all, assigned to PW 193 Inspector Sukhwinder Singh on 24.01.1999. The Supervising Officer at that time was PW167 ACP P. P. Singh. PW193 Inspector Sukhwinder Singh was the Investigating Officer between 24.01.1999 and April, 2000, when the case file was handed over to Inspector Ranbir Singh along with the records. Inspector Ranbir Singh was, however, not made a witness in the case. It was further submitted that between the period April, 2000 and June, 2002, which was a duration of about two years and two months, there was a complete blank in the investigation. It was also submitted by the learned counsel that initially even Rakesh Bhatnagar, who was the husband of the deceased Shivani Bhatnagar, was a suspect. However, despite this fact, the call details of Rakesh Bhatnagar, although referred to by the prosecution,

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were not placed before Court. As per PW193, Inspector Sukhwinder Singh, the mobile phone records of Rakesh Bhatnagar and particularly the calls received and made on 23.01.1999 were scrutinized by him. However, as aforesaid, the details were not placed before Court. 29. The fact that Rakesh Bhatnagar was also one of the suspects has been admitted

by PW167 ACP P. P. Singh in the course of his cross-examination. As recorded in page 933 of Volume 4, Rakesh Bhatnagar is stated to have remained a suspect till February, 2000 while the case was under his supervision. This witness had also

stated that call details including that of R. K. Sharma were collected in 1999 itself and had been scrutinized. The learned counsel also submitted that R. K. Sharma never had a personal mobile phone.

30.

In this backdrop, Mr Sushil Kumar submitted that R. K. Sharma had gone out of the area of suspicion in 2000 inasmuch as he had undergone, though partially, a lie detector test and his call details had been scrutinized and he had also been interrogated. He submitted that between 2000 and 2002, no new material against R. K. Sharma was unearthed. Yet, in July, 2002, he was made the prime suspect before the media.

31.

Mr Sushil Kumar further submitted that on 18.06.2002, PW203 Inspector Inder Singh took charge of the investigation and he constructed the case on the basis of the same material. It was the submission of Mr Sushil Kumar that the previous investigating officers, Inspector Ranbir Singh and Inspector Ran Singh were not brought as witnesses. Our attention was drawn to the testimony of PW203 Inspector Inder Singh, wherein he stated that in the case file, which he received, there were printouts of various mobile phones and landlines, which included the crucial number 9811008825, which allegedly belonged to the accused Shri Bhagwan. The learned counsel submitted that it is on the basis of the old existing printouts that PW203,

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Inspector Inder Singh proceeded to search for Shri Bhagwan and the other accused. Allegedly, the first disclosure was that of Shri Bhagwan and was said to have been recorded on 30.07.2002. Thereafter, the disclosure statement of Pradeep Sharma was purportedly recorded on 03.08.2002 and then of Satya

Prakash on 18.08.2002 and finally of R. K. Sharma on 05.10.2002. subsequent disclosure statements also. 32. The main propositions urged by Mr Sushil Kumar, the learned senior counsel Of course, each of the accused made

appearing on behalf of the appellant R. K. Sharma, were:(i) That the conviction by the trial court is based only on the purported disclosure statements and call records particularly of phone number 9811008825, which is alleged to have belonged to Shri Bhagwan. All the disclosure statements have been illegally admitted by the trial court as evidence, in contravention of the provisions of Section 27 of the Indian Evidence Act, 1872. The call records are unreliable pieces of evidence inasmuch as (a) (b) (iv) there is non-compliance with the provisions of Section 65B of the Indian Evidence Act; and the contents are also inherently unreliable.

(ii)

(iii)

The factum of the purported motive being absent, as acknowledged by the trial court, is an important factor particularly in a case of circumstantial evidence such as the present one and cannot be simply put aside or ignored as was done by the trial court.

33.

In support of these propositions, Mr Sushil Kumar took us through the

impugned judgment in detail and also through the various call records and the purported disclosure statements. The same shall be discussed later in this judgment. The learned counsel also submitted that the trial court had placed reliance on Section 10 of the Indian Evidence Act to suggest that things said or done by a conspirator in reference to a common design was a relevant fact particularly in reference to their

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common intention. He submitted that all the disclosure statements made by the accused were post arrest and, therefore, Section 10 would not come into play at all and consequently the conclusion arrived at by the trial court to the effect that admission made by one accused, if inculpatory, can be relied upon against another co-accused, was not correct. He reiterated that post arrest statements, such as the so-called

disclosure statements in the present case, were clearly inadmissible. In the backdrop of Section 27 of the Indian Evidence Act, the learned senior counsel, referred to the Supreme Courts decision in the case of Alope Nath Dutta v. State of West Bengal : 2007 (12) SCC 230 and submitted that the disclosures were clearly inadmissible but have not only been accepted or exhibited by the trial court but have ultimately been made the basis of conviction. The conclusion made in the impugned judgment that all these disclosures made by the accused to the police are admissible under Section 27 of the Indian Evidence Act was, according to the learned counsel for the appellant R. K. Sharma, clearly erroneous. A reference was also made to Devesh Kumar v. State, a decision of a Division Bench of this Court in CrI. A. 793/2004 decided on 10.02.2010.

Submissions of Mr Sidharth Luthra, senior advocate appearing on behalf of the appellant Shri Bhagwan Sharma 34. Mr Sidharth Luthra, the learned senior counsel appearing on behalf of Shri

Bhagwan Sharma submitted that the case of the prosecution against his client is that he knew R.K. Sharma from before and in view of his relationship with R.K. Sharma he conspired with R.K. Sharma to kill Shivani Bhatnagar. According to Mr Luthra, the case against Shri Bhagwan Sharma is based totally on circumstantial evidence and there is not a single eye witness who testifies to his involvement in the commission of the offence. He also submitted that the trial court has not even found any motive to have been attributed to him.

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35.

In connection with his client, Mr Luthra submitted that, inter alia, the following

crucial questions arose for consideration:(i) Whether there was any relationship between R. K. Sharma and Shri Bhagwan? Whether the mobile phone number 9811008825 belonged to and/ or was used by Shri Bhagwan? Whether Shri Bhagwan visited Ashoka Hotel on 13.01.1999 and had a meeting with RK Sharma and others? Whether the car bearing registration No. HR 26 G 9800 belonged to and/ or was used by Shri Bhagwan?

(ii)

(iii)

(iv)

His submissions on these questions are set out hereinbelow. (i) 36. Relationship between RK Sharma and Shri Bhagwan Sharma According to Mr Luthra, the prosecution sought to establish the relationship

between R.K. Sharma and Shri Bhagwan Sharma by virtue of two circumstances. The first circumstance being that Shri Bhagwan Sharma and R.K. Sharma knew each other through Shri Bhagwan Sharmas father, PW71 Onkar Sharma, a retired police officer, who had been posted under R.K. Sharma while the latter was posted as SP in District Rohtak. This, according to the Mr Luthra did not mean that they (Shri Bhagwan Sharma and RK Sharma) were so well acquainted with each other that they could hatch a conspiracy to kill someone. He further submitted that PW71Onkar Sharma, in his examination in chief, clearly stated that he knew R.K. Sharma only in the capacity of his superior officer. Mr Luthra submitted that PW 71 Onkar Sharma revealed in his cross examination that R.K. Sharma had even passed strictures against him. In this backdrop, it was submitted that there was no basis to conclude that they shared such a close relationship that they could conspire together.

37.

The second circumstance sought to be established on behalf of the prosecution was that Shri Bhagwan Sharma was a property dealer and that he was investing CRL.A. Nos.357/08, 486/08, 396/08, 338/08, 751/09 & 752/09

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money on behalf of R.K. Sharma. It was submitted that in order to prove this circumstance the prosecution examined PW 105 Mrs. Abha Singh and PW 106 Mr. DK Singh both of whom admitted knowing RK Sharma but denied knowing Shri Bhagwan Sharma. It was also submitted that while PW 16 Diwan Chand Sharma and PW 17 Vishweshwar Dubey have stated that Shri Bhagwan Sharma was a property dealer, neither of them have stated that any investment in property was made by Shri Bhagwan Sharma on behalf of R.K. Sharma or that Shri Bhagwan Sharma purchased property on behalf of R.K. Sharma. It was further submitted that PW127 Nawal Singh and PW128 Pradeep were examined by the prosecution to establish that Shri Bhagwan Sharma was a property dealer and that they had paid a sum of ` 10,00,000/to Shri Bhagwan Sharma in respect of a property transaction, however, neither of these witnesses supported the case of the prosecution nor has the prosecution brought on record any proof regarding payment of the said sum of ` 10,00,000/-.

38.

Consequently, Mr Luthra submitted, the prosecution has not been able to

establish that Shri Bhagwan Sharma knew R.K. Sharma and, at any rate, knew him so well that he could conspire with him (without any gain for himself) to kill someone.

(ii) Was Mobile Phone No. 9811008825 owned and/or used by Shri Bhagwan Sharma? 39. Mr Luthra generally submitted that the trial court had seriously erred in relying

upon the records of various mobile numbers and landline numbers when the same were not proved in accordance with law. Moreover, the prosecution had not

produced the corresponding records for the incoming calls of the various landline numbers including those attributed to Shri Bhagwan Sharma, thereby depriving the defence of an opportunity to test the veracity of the records especially when the same is, at best, secondary evidence.

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40.

It was submitted that the prosecution sought to establish that Shri Bhagwan

Sharma used SIM Card No. 9811008825 by inserting the same in a Nokia mobile instrument having IMEI No.490520304282810 to talk to R.K. Sharma and other convicts during the period November 1998 to 23-01-1999. On 23-01-1999 SIM card No.9811008825 was allegedly destroyed and the mobile instrument having IMEI No.490520304282810 was then allegedly used by Satya Prakash Sharma with SIM card No. 9811048912 from 04-03-1999 to 05-07-1999 and from 05-07-1999 to 22-09-1999 this mobile instrument was allegedly used by Pradeep Sharma and occasionally by his friend PW111 Narendra Solanki and from 07-12-2001 to 20-07-2002 the said mobile instrument is alleged to have been used by PW126 Hari Chand in conjunction with SIM card No.9810025524.

41.

In an attempt to prove the Shri Bhagwan Sharmas ownership and use of SIM

Card No. 9811008825 and mobile handset having IMEI No.490520304282810, the prosecution examined 1. 2. PW18 Naveen Kumar (relative of Shri Bhagwan Sharma); PW97 Rohit Dabar and PW107 Shailender Gaba (owners of shop Nirmal Communications, Lajpat Nagar from where the said SIM card and mobile instrument were allegedly purchased by Shri Bhagwan Sharma through PW18 Naveen Kumar); PW 126 Hari Chand from whom the mobile instrument was allegedly seized; PW135 Major AR Satish (retd) (to prove the CDRs of SIM Card No.9811008825 and CDR of IMEI No. 490520304282810; PW139 RK Singh (to

prove the CDR of SIM card No. 9810025524 attributed to PW126 Hari Chand); and PW187 Inspt. K.P. Singh and PW203 Inspt. Inder Singh, who were also examined on this aspect.

3. 4. 5. 6.

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It was submitted that neither PW 18 Naveen Kumar nor PW97 Rohit Dabas nor PW107 Shailender Gaba supported the case of the prosecution and no document of purchase of the mobile instrument been produced by the prosecution. 42. It was also submitted that although CDR for Mobile No. 9811008825 Ex.PW

135/28 from 03-01-1999 to 23-01-1999 is available but no IMEI number is mentioned on Ex.PW135/28. The CDR for Mobile No. 9811008825 was requested by letter

dated 27-09-2002 Ex.PW135/26 and was delivered under cover of letter dated 27-09-2002 Ex.PW135/27. However, there is nothing on record to show how the prosecution came to know that the mobile instrument having IMEI

No.490520304282810 was being used with SIM card No.9811008825. Thus, according to Mr Luthra, there is no evidence to connect SIM card No.9811008825 and mobile instrument having IMEI No.490520304282810. Moreover, after 23-01-1999, no CDR of mobile No. 9811008825 is available on record. SIM card bearing No. 9811008825 has not been produced in evidence and is stated to be destroyed, proof of which fact is sought to be being derived from alleged disclosure statements Ex PW 132/29 and Ex.PW132/30 of Shri Bhagwan Sharma and from Ex PW 180/4. 43. It is alleged that instrument having IMEI No.490520304282810 was used with

SIM No. 9811048912 for which the CDR is: Ex.PW 135/1 from 04-03-1999 to 24-03-1999; Ex.PW135/2 from 01-04-1999 to 30-04-1999; Ex.PW135/3 from 01-05-1999 to 30-05-1999; Ex.PW135/4 from 02-06-1999 to 30-06-1999; part of

Ex.PW 135/5 from 01-07-1999 to 05-07-1999. But, it was submitted, neither SIM card No. 9811048912 has been produced nor any documents to prove its ownership from manufacturer/telecom agency. PW 135 Major AR Satish is silent about the ownership and registration of any number and PW 163 Mukesh Yadav has not supported the prosecution on this.

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44.

Furthermore,

CDR

of

IMEI

No.490520304282810

(Ex.PW135/1

to

Ex.PW135/25) is claimed to be taken out on 26-08-2002 but, on that date there was no request to Hutch for CDR nor was this IMEI Number available then inasmuch as the first letter seeking the call details of SIM number 9811008825 was written on 27.09.2002 Ex.PW135/26. It is submitted that the IMEI Number for mobile No.9811008825 was not available with the Police till as late as 13-10-2002 as PW203 Inder Singh admitted in his cross examination that the IMEI number of the mobile was not supplied even after sending/ despatching Ex.PW203/24 dated 13-10-2002.

45.

While instrument having IMIE No. 490520304282810 is alleged to have been

used with SIM card bearing no.9811046572 from 05-07-1999 to 22-09-1999 as per CDR Ex.PW135/5, it was submitted that PW111 Narender Singh has not supported the prosecution case as to ownership/ use of the instrument by Pradeep Sharma. Furthermore, no documents evidencing ownership/ use of mobile No.9811046572 by Pradeep Sharma or anyone are on record.

46.

Mr Luthra submitted that it is also noteworthy that CDR 26-08-2002 of IMEI

No.490520304282810 for the month of February 2000 reveals that the mobile instrument was used with SIM card No.9811036174 but, no record of ownership of mobile No. 9811036174 has been produced.

47.

It was also submitted that instrument with IMEI No. 490520304282810 was

alleged to have been used with SIM card No. 9810025524. PW126 Hari Chand claims to have obtained the mobile instrument having IMEI No. 490520304282810 from one Sonu who is not examined. Furthermore, PW 126 Hari Chand does not affirm in his testimony that SIM Card No. 9810025524 belonged to him.

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48.

It was submitted that there was nothing on record to link SIM card

No.9811008825 and mobile instrument having IMEI No.490520304282810 with Shri Bhagwan Sharma as there was no documentary evidence to show ownership of the said SIM card and mobile equipment and the witnesses examined did not support the prosecution case on this aspect. In fact, according to Mr Luthra, the prosecution could not even bring on record as to how they became aware of IMEI

No.490520304282810. Furthermore, neither the said SIM card nor mobile instrument was produced. (iii) 49. Whether Shri Bhagwan visited Ashoka Hotel on 13.01.1999? Mr Luthra submitted that it is the case of the prosecution that on 13-01-1999

R.K. Sharma called Shri Bhagwan Sharma and that Shri Bhagwan Sharma accompanied by Satya Prakash, Ved Prakash @ Kalu and Ved Prakash Sharma went to Ashoka Hotel to meet with RK Sharma in car no HR 26G 9800. It is further alleged that, at Ashoka Hotel, RK Sharma pointed out Shivani Bhatnagar to the said persons and, thereafter, accompanied them in car no HR 26G 9800 to Navkunj Apartments. 50. It was submitted that the prosecution sought to prove this meeting by showing

that RK Sharma used mobile phone no. 98110088225 (attributed to Shri Bhagwan Sharma ) to call his daughter Ms Pragati on number 9810020829, PW 108 Kunal Lalani on number 9810067890 and Dr. J.K. Pasricha on telephone numbers 254040 and 255050. According to the learned counsel, the prosecution has neither examined Ms Pragati nor proved that mobile number 9810020929 belongs to her. The prosecution has also not examined Dr. J.K Pasricha. PW 108 Kunal Lalani has deposed that he does not know RK Sharma and due to lapse of time he cannot say if he received any call from RK Sharma. Hence, according to the learned counsel, the above facts do not prove that Shri Bhagwan Sharma met with RK Sharma on 13-01-

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1999 at Ashoka Hotel, New Delhi or that RK Sharma used mobile no. 9811008825 attributed to Shri Bhagwan Sharma to make calls to persons known to him.

51.

It was contended that in order to prove that Shri Bhagwan Sharma came to

Ashoka Hotel in car no HR 26G 9800 on 13.01.1999, the prosecution relied upon a parking receipt no. 3014 (Ex PW 60/2A) of Ashoka Hotel which only has the numbers "9800" written on it. PW 60 Surender Singh who was working as Manager Vigilance Security at the Ashoka Hotel proved the said receipt. It is the case of the prosecution that the said parking receipt is proof of the fact that car No. HR 26G 9800 attributed to Shri Bhagwan Sharma came to Ashoka Hotel on 13-01-1999 and, therefore, Shri Bhagwan Sharma had also come to Ashoka Hotel on the said date. It was submitted that PW60 Surender Singh is neither the author of the receipt nor has he identified the car in question. He also states in his cross examination that he cannot say whether the said receipt is that of a car or a two wheeler. Hence, according to the learned counsel, there was no basis for the Trial Court to assume that Shri Bhagwan Sharma had come to Ashoka Hotel on 13-01-1999 in car No. HR 26G 9800.

52.

It was also contended that in order to prove the meeting of 13-01-1999 the prosecution must also establish that Shivani Bhatnagar came to Ashoka Hotel on that date. PW72 Dharam Singh and PW74 Manjeet Singh are the taxi drivers who allegedly brought Shivani Bhatnagar to Ashoka Hotel in the second week of January 1999. However neither of the two witnesses supported the case of the prosecution. As per the prosecution Shivani Bhatnagar met with RK Sharma at Ashok Hotel on 13-01-1999 in the evening but later during trial the prosecution sought to show that Shivani Bhatnagar came to the hotel in the afternoon. It was also pointed out by the learned counsel that PW106 D.K. Singh in his examination in chief stated that he met RK Sharma at 12:45 pm and was with him for 45 minutes. This, according to the learned counsel, clearly proves the fallacy in the case of the prosecution and proves

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that it was not possible for RK Sharma to have met with Shivani Bhatnagar as alleged by the prosecution.

53.

It was further submitted that no one from the Ashoka Hotel identified the car and no witness testified that Shri Bhagwan Sharma was seen or was present at the Ashoka Hotel on 13-01-1999 or at or near Navkunj Apartments on 13-01-1999.

According to the learned counsel, the circumstance that Shri Bhagwan Sharma allegedly met with RK Sharma on 24.12.1998, 13.01.1999 and on 25.01.1999 had not been put to Shri Bhagwan Sharma during his examination U/s. 313 Cr.P.C and, therefore, the Trial Court could not have relied upon the same against Shri Bhagwan Sharma.

(iv) 54.

Whether the car bearing registration No. HR 26 G 9800 belonged to and/ or was used by Shri Bhagwan? It is the case of the prosecution that though the Maruti Esteem car bearing no.

HR 26G 9800 was not registered in the name of Shri Bhagwan Sharma but, it was actually owned and used by him. According to the learned counsel the Trial Court also arrived at this conclusion but, solely on the alleged submission of the learned Special Prosecutor to the following effect:"That when a vehicle is sold through an agent, the practice in vogue is that car dealer gets form 29, 30 signed from the intended seller alongwith affidavit. The dealers sell such vehicle to the intended purchaser on the basis of those documents filling his name on their own. Very often it is not known to the seller as in whose name registration certificate of the said vehicle will be transferred. Similarly it is not necessary that buyer meets seller face to face. Sometimes vehicles changes several hands, without any change in registration certificate."

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55.

It was submitted that, contrary to the above statement, PW 65 Ram Singh,

Clerk SDM office proved the ownership of the Car and deposed that in 1998 the said Car was purchased by PW 69 Dayanand Kataria (documents of ownership being Ex Pw 65/2), who thereafter sold it to PW75 Maan Singh (documents of ownership being Ex Pw 65/6 to Ex Pw 65/13), from whom the car was transferred to PW64 Ms. Sabina Bhatia (documents of ownership being Ex Pw 64/3 to Ex Pw 64/6) and, finally, to PW200 Venkateshwar Girish. It was contended that the entire premise of the submission of the Ld. Special Public Prosecutor which has erroneously also been accepted by the Trial Court is based on a solitary document being Ex PW 77/2A, which is purported to be a carbon copy. To further buttress its hypothesis the prosecution relied upon the opinion of PW132 Deepa Verma handwriting expert who deposed that the signature appearing on Ex PW 77/2A is that of Shri Bhagwan Sharma. However, according to the learned counsel for Shri Bhagwan Sharma, what the Trial Court failed to appreciate was that PW77 Ravinder Shokeen from whom this document is said to have been recovered, has expressly stated in his testimony before the Trial Court that when Ex PW772A was seized from him by the police it was blank. It was also submitted that all the other witnesses examined by the prosecution being PW 94 Mahesh Kumar, PW 91 Krishan Kumar, PW 86 Mohan Kathuria, PW 116 Satbir Kataria and PW 92 Sanjay Singh have not supported the version of the prosecution. 56. It was submitted that the prosecution has not been able to prove beyond

reasonable doubt that car No. HR 26G 9800 was owned and used by Shri Bhagwan Sharma.

57.

It was also contended that the investigating agency did not discover any facts

on account of the alleged disclosure statements of Shri Bhagwan Sharma and that the disclosure statements themselves are actually false and have not been made by Shri Bhagwan Sharma and even otherwise cannot be relied upon against him.

Submissions of Mr Sarfaraz Hussain, counsel appearing on behalf of the appellant Satya Prakash Sharma 58. Mr Sarfaraz Hussain, the learned counsel appearing on behalf of the appellant

Satya Prakash Sharma submitted that as per the prosecution, the link between Shri Bhagwan and Satya Prakash Sharma is that Satya Prakash Sharma is said to be a tenant of Shri Bhagwan and also a property dealer. Pradeep Sharma is alleged to be Satya Prakashs nephew (sisters son). According to the learned counsel, all the disclosure statements are illegal and cannot be relied upon as evidence. He also submitted that no conspiracy has been established between Satya Prakash Sharma and Shri Bhagwan or any of the other accused. 59. With regard to the relationship between Shri Bhagwan and Satya Prakash

Sharma, the learned counsel referred to the testimony of PW15 Head Constable Dinesh Kumar, who stated that he was not aware of the occupation of Shri Bhagwan and that he did not know the accused Satya Prakash Sharma. He further stated that although his statement was recorded, he was made to sign blank papers and that he had not stated that Satya Prakash Sharma was a tenant of Shri Bhagwan and was also doing a job of a property dealer. He also denied having stated to the police that he knew Satya Prakash Sharma. 60. The learned counsel then referred to the testimony of PW16 Diwan Chand

Sharma, who was an inspector in Delhi Police and also happened to be the brother-inlaw of Shri Bhagwan. PW16 Diwan Chand Sharma stated that he did not know Satya Prakash Sharma and that Satya Prakash Sharma had no partnership with Shri Bhagwan. Therefore, according to the learned counsel, there was no relationship

between Satya Prakash Sharma and Shri Bhagwan.

61.

Our attention was also drawn to the testimony of PW17 Visheshwar Dubey, who was the security guard at Jalaan Farms and who had stated that Shri Bhagwan, Satya Prakash Sharma and Ved Prakash @ Kalu used to come to Ved Prakash Sharma and Ramesh Singhal once in 15-20 days. According to the learned counsel this part of the testimony was not there in the Section 161 Cr. P.C statement and, therefore, PW17 Visheshwar Dubey had made this improvement and was, in all likelihood, a tutored witness. Referring to PW18 Naveen Kumar, who was a relative of Shri Bhagwan, the learned counsel drew our attention to his testimony wherein he has stated that he did not know Satya Prakash and also did not know whether Satya Prakash and Shri Bhagwan were friends.

62.

The learned counsel submitted that PW43 Sajjan Pal Kataria, who was a Block Development Officer, Jhajjar, Haryana, was a witness for the prosecution to prove the relationship between Satya Prakash and R. K. Sharma. With reference to the testimony of this witness, it was pointed out that Satya Prakash was the Sarpanch of village Utlodha during December, 1994 to February, 2000 and that on 13.01.1996, the inauguration of a school room was got done by R. K. Sharma and that too by a unanimous decision of the Gram Panchayat in 1996. The learned counsel submitted that the murder took place in 1999 and there is no evidence of any meeting between Satya Prakash and R. K. Sharma during this period. With reference to the alleged meeting of Satya Prakash and other accused with R. K. Sharma at Ashoka Hotel on 13.01.1999, the learned counsel stated that on that date, Satya Prakash was in the village as he had presided over a Gram Panchayat meeting as would be evident from Exhibit PW43/DA and Exhibit PW43/DB.

63.

The learned counsel also referred to the testimony of PW89 Inder Prakash, who

stated that Satya Prakash remained in the village during the entire period of January, 1999. This statement was made by him in examination-in-chief. When the public

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prosecutor requested to cross-examine the witness, the same was rejected as the Court had observed that he had not resiled from his Section 161 Cr. P.C statement. PW89 further stated in cross-examination that a sports function was held in the village between 18.01.999 to 24.01.1999 and Satya Prakash had remained there. The prize distribution function was held on 24.01.1999, which was followed by the Republic Day functions on 25.01.1999 and 26.01.1999. Thus, the learned counsel appearing on behalf of Satya Prakash submitted that the latter was not in Delhi either on 13.01.1999 when the alleged meeting with R. K. Sharma took place at Ashoka Hotel nor on 23.01.1999, when Shivani Bhatnagar was murdered.

64.

The learned counsel further submitted with reference to PW140 Om Prakash

(who was a tenant of Shri Bhagwans father Onkar Sharma) that he stated that he did not know Satya Prakash and that he did not state to the police that Satya Prakash was working with Shri Bhagwan or was his tenant. The learned counsel also submitted that PW163 Mahesh Yadav also stated that he did not know Satya Prakash and that he had not stated to the police that mobile phone number 9811048912 was used by Satya Prakash. The learned counsel also submitted that no calls had been made to Satya Prakash while calls to the others have been mentioned in detail. Finally, he submitted that the alleged signature in the register at Hotel Milan was not compared with the specimen signature of Satya Prakash and, therefore, the same cannot be linked with Satya Prakash. He also submitted that the alleged recovery of ` 3 lacs from Satya Prakash was not established.

Submissions of Mr D. B. Goswami appearing on behalf of the appellant Pradeep Sharma 65. Mr D. B. Goswami, the learned counsel appearing on behalf of the appellant

Pradeep Sharma made submissions on five aspects:(i) Motive;

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(ii) (iii)

Conspiracy; Call details in respect of landline No. 5018092 at village and post office Dichaon Kalan, District Nazafgarh, Delhi; Chance prints allegedly lifted from the scene of murder from the polythene covering of the sweetmeat box and the tea cup; and Handwriting in the register of the entry gate of Navkunj Apartments.

(iv)

(v)

Motive & Conspiracy 66. With regard to the alleged motive, Mr Goswami drew our attention to

paragraph 105 to 107 of the impugned judgment to contend that even before the trial court, the prosecution had failed to establish the alleged motive behind the killing of Shivani Bhatnagar. He submitted that there was no iota of evidence that a sum of ` 3 lacs or any other sum was paid to Pradeep Sharma for the alleged job. He, however, submitted that despite the fact that the trial court observed that no motive had been established on record, the trial court ignored this important circumstance by taking the view that motive is not necessary. He submitted that while motive may not be a vital circumstance in cases of direct evidence, where there were eye witnesses of the occurrence, but in a case of circumstantial evidence, the establishment of a motive attains great significance. Therefore, in the present case, which is one of

circumstantial evidence, the absence of a motive would seriously dent the prosecution case. 67. Mr Goswami further submitted that the appellant Pradeep Sharma had no links

with R. K. Sharma, direct or indirect, and was admittedly not known to R. K. Sharma. He was, even as per the prosecution case, not initially a part of the conspiracy. Thus, according to Mr Goswami, why would Pradeep Sharma take the risk of killing Shivani Bhatnagar without any compensation? He referred to the decision of the Supreme Court in the case of Omwati & Ors. v. Mahendra Singh & Ors: (1998) 9 SCC 81, wherein it was observed in paragraph 10 that when the prosecution puts forth a

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specific case as to motive and fails to prove it, it is a very important circumstance. Consequently, it was submitted by Mr Goswami that the failure on the part of the prosecution to prove the specific case of motive, particularly with regard to Pradeep Sharma, is a very important circumstance which ought not to have been overlooked or brushed aside by the trial court. Call details 68. With regard to the call details, Mr Goswami submitted that the landline number

5018092, which was in the name of Ram Phal Sharma at village Dichaon Kalan, had no STD facility. This has been stated by PW176 Suresh Kumar Kathuria from MTNL in the course of his cross-examination. The learned counsel further submitted that Pradeep Sharma did not reside in village Dichaon Kalan nor was he related to the said Ram Phal Sharma. In fact, it was suggested by the learned counsel that Ram Phal Sharma ought to have been called to the witness box by the prosecution, but that has not been done and, therefore, the said telephone number cannot be linked with Pradeep Sharma. It was definitely not Pradeep Sharmas phone number. Thus, according to Mr Goswami, there is no evidence of any phone calls between Pradeep Sharma and the other accused. Chance Prints 69. With regard to the chance prints lifted on 23.01.1999 from the glass tumbler

(Q1), the polythene covering of the sweet box (Q2, Q3, Q4, Q5) and the tea cup (Q6), Mr Goswami submitted that it is only the chance print Q3, which, as per the finger print experts report Exhibit PW192/97 dated 08.08.2002, matched the supplied prints S3, S4, S5 and S6 of Pradeep Sharma. He further submitted that the finger print report Exhibit PW192/97 bears the date 08.08.2002 whereas Exhibit PW192/95 shows that the finger print expert had conducted the examination on 21.08.2002. The same was also signed by the Director, Finger Print Bureau, Delhi Police, Delhi on

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26.08.2002. Thus, according to Mr Goswami, the finger print report itself is of a doubtful nature. 70. He further submitted that the chance print Q3, which was allegedly lifted on

23.01.1999 was, in fact, not taken from the polythene covering of the sweet box. He made this inference on the basis of the fact that the finger prints of the owners of the sweet shop were taken but they were not compared with the chance prints lifted from the polythene covering of the sweet box. Instead, they were compared with the chance prints Q1 and Q3 lifted on 25.01.1999 from the perfume bottle and lipstick, with which the said owners had, admittedly, no connection. Mr Goswami submitted that if the finger prints of the owners of the sweet shop were also compared with the chance prints taken from the polythene covering of the sweet box and if a match was found, then it would have been conclusive proof that the sweet box was taken from the said sweet shop. On the other hand, if the prints did not match, then an inference could be drawn that the sweet box was not purchased from the said shop. And, it is in order to avoid this inference that the chance prints taken from the polythene cover of the sweet box were not compared with the finger print samples from the owners of the sweet shop. Thus, according to Mr Goswami, it is apparent that the chance print Q3 taken on 23.01.1999 was not taken from the polythene cover of the sweet box. Entry Register 71. Referring to the entry register Exhibit PW61/1, Mr Goswami submitted that the

same was not genuine. He submitted that the entry at page 47 of the register showed that a person by the name of Rajiv Bhatnagar had entered the premises at 2:50 pm and had left at 3:10 pm. The entry also indicates that the said person was to visit flat No. B-42 and that the purpose of the visit was to extend an invitation. The address of Rajiv Bhatnagar, which was supplied at the time of making the entry, was house No. 311, Tribune Colony, Chandigarh. Mr Goswami submitted that the person, who had given his name as Rajiv Bhatnagar, entered the premises at 2:50 pm and exited

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therefrom at 3:10 pm, as per the entry register. However, as per the ruqqa and FIR, the murder of Shivani Bhatnagar is said to have taken place between 3:30 pm and 5 pm on 23.01.1999. 72. Moreover, Mr Goswami submitted that if the entry in the register was a

genuine one, then this was the very first thing which ought to have been investigated. In other words, the investigating officer should have immediately verified as to who Rajiv Bhatnagar was and whether he resided at house No. 311, Tribune Colony, Chandigarh. It has later transpired that although house No. 311, Tribune Colony, Chandigarh is an actual address, no person by the name of Rajiv Bhatnagar resided therein. But, the important point, according to Mr Goswami, is that the police went to Chandigarh to verify this fact for the first time on 03.10.2002, that is, after over two and a half years of the incident. This also, according to Mr Goswami, casts doubts on the existence of the entry in the register at the time the incident took place.

73.

He further submitted that as per the entry register, another person by the name of Wasaluddin had made an entry at 3:45 pm and he exited at 4 pm. The purpose of the entry was also to visit B-42 and the purpose was indicated to be dry cleaning. Mr Goswami submitted that the said Wasaluddin had not been produced

as a witness by the prosecution, when he would have been crucial insofar as the appellant Pradeep Sharma is concerned. He submitted that if Wasaluddin had seen Shivani Bhatnagar alive between 3:45 and 4 pm, then obviously the case of the prosecution against Pradeep Sharma would fall to the ground.

74.

Mr Goswami further submitted that PW87 Hira Lal was the security guard on the date of the incident at Navkunj Apartments. Yet, PW87 Hira Lal was not asked to identify Pradeep Sharma and in fact, no test identification parade was conducted insofar as Pradeep Sharma was concerned. As per the testimony of PW87 Hira Lal, on the date of the incident, a function was being held at Navkunj Apartments by

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Mr Akshat Jain and many persons had entered the complex without making any entry. Thus, according to Mr Goswami, anyone of those persons could have been the assailant insofar as Shivani Bhatnagar was concerned. Mr Goswami also pointed out that as per PW167 ACP P. P. Singh, the visitors register was seized on 26.01.1999. However, there is no date in the seizure memo Exhibit PW79/1. The seizure memo also does not refer to the dates of the entries in the register. Mr Goswami also submitted that from the testimony of PW167 ACP P. P. Singh, it is clear that he had not looked for the visitors register on 24.01.1999 and did not remember if he had asked for the register on that date. The said witness did not make any enquiry about Abhijeet Kumar because he was the brother of the deceased. The statement of

Wasaluddin was also not recorded nor was any attempt made to interrogate any person by the name of Rajiv Bhatnagar. The inference that was sought to be drawn by the learned counsel from these statements was that as nobody tried to locate and/ or interrogate the person by the name of Rajiv Bhatnagar, whose name was purportedly entered in the register on 23.01.1999 to gain entry to

Shivani Bhatnagars flat, there was no such entry in the register and that is the reason why nobody sought to trace out and/ or interrogate a person by the name of Rajiv Bhatnagar. In any event,

Mr Goswami submitted that the entry register was shrouded in doubt and, therefore, could not be relied upon to implicate Pradeep Sharma. 75. Mr Goswami referred to the post mortem report and stated that it was also

interesting to note that asphyxia occurred first, that is, prior to the injuries 1 and 4 and that there was an interval of 3 to 6 minutes between asphyxia and the injuries 1 and 4.

76.

With regard to calls having been made from the landline number 5011013,

which was located at the ET&T; Computer Centre, the learned counsel submitted that although six calls were made at the ET&T; Computer Centre, they cannot be connected with Pradeep Sharma. First of all, the purported admission form (Mark PW59/1) of Pradeep Sharma at the time of seeking admission at the ET&T; Computer Centre, has

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not been established to be that of Pradeep Sharma and secondly there is no evidence that Pradeep Sharma was, in fact, undergoing a course at the ET&T; Computer Centre. He further submitted that, in any event, the questions that were put to Pradeep Sharma at the time of recording his statement under Section 313 Cr. P.C were not correctly framed. The question put was that six calls had been made at the ET&T; Computer Centre, whereas the question ought to have been that the calls were received by Pradeep Sharma at the said centre and there were no questions put to Pradeep Sharma with regard to whether he had made the said calls. In respect of the landline number 50180 92 installed in the name of Ram Phal Sharma at village Dichaon Kalan, the learned counsel submitted that

Pradeep Sharma cannot be connected with the same. This is so because Pradeep Sharma did not reside in village Dichaon Kalan and he is not related to Ram Phal Sharma in any way. The said Ram Phal Sharma had not been called to the witness box. It was, therefore, contended by Mr Goswami that there is no evidence of any phone calls between Pradeep Sharma and the others. Sweet Box 77. With regard to the box of sweets, which allegedly was carried by Pradeep

Sharma to B-42, Navkunj Apartments and handed over to Shivani Bhatnagar, Mr Goswami submitted that the sweet box did not contain the name of the shop printed on it. In this backdrop, he submitted that when the name of the shop was not printed on the box and the disclosure statements were recorded in 2002, then how did the police reach PW80, Smt. Indu Bala, who was the owner of the shop at A-44, Pandav Nagar, Delhi and take her finger prints as also that of her husband in 2001? In any event, Mr Goswami submitted that from the testimony of PW80, Smt. Indu Bala, it is clear that she cannot identify the person who purchased the said sweet box. In fact, according to Mr Goswami, even the sweet box was not shown to PW80 Smt. Indu Bala and thus that has not been identified as having originated from her shop.

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Wire 78. Mr Goswami, the learned counsel appearing on behalf of Pradeep Sharma,

submitted that even the yellow wire, which is supposed to have been used by the killer for strangulating Shivani Bhatnagar, has its own story to tell. He submitted that at the time of post mortem examination, as indicated in Exhibit PW3/1, the wire shown to the Board, which conducted the post mortem, was a yellow wire of 49 inches length and it is, therefore, opined that strangulation is possible by the said wire shown to them. PW3 Dr. R. K. Sharma, who was the head of the Medical Board which conducted the post mortem examination, was recalled for re-examination and a question was put to him as to whether he mentioned the length of the crime wire shown to him by the Investigating Officer. In answer, he stated

that he had already mentioned it in his evidence previously recorded before the court. The court observed that as per the evidence of the said witness recorded on 25.03.2003, the length of the crime wire was given as 49 cms. Mr Goswami also contended that as per Exhibit PW66/3, which is the purported recovery memo in respect of the wire, no measurement of the wire is mentioned therein. Therefore, it was contended by Mr Goswami that the alleged electric wire which was allegedly used by the killer to strangulate Shivani Bhatnagar is also not free from doubt. Finally, Mr Goswami also submitted that the purported disclosure statements made by Pradeep Sharma are inadmissible in evidence as nothing was pointed out by Pradeep Sharma and no recovery was made pursuant to the purported disclosure statements. Consequently, Mr Goswami submitted that the prosecution has failed to establish beyond reasonable doubt that it was Pradeep Sharma who was the killer. The learned counsel had placed reliance on the following decisions: (i) (ii) (iii) (iv) Bhagirath v. State of M. P. : (1976) 1 SCC 20; Rajendran v. State of Tamil Nadu: 1997 Cr.L.J.4344 (Mad)(DB); State of Madhya Pradesh v. Sitaram Rajput: 1978 Cr. L. J. 1220; Fakhruddin v. State of Madhya Pradesh: 1967 Cr. L. J. 1197.

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Submissions of Mr Pawan Sharma on behalf of the State 79. Mr Pawan Sharma appearing on behalf of the State retraced the sequence of

events of 23.01.1999. He submitted that on that date, a phone call was made from the mobile phone number 9811008825 to 5018092, which was installed at house No. 201, Roshan Garden, Najafgarh, Delhi. The duration of the call was 55 seconds and the time it was made was 11:55 am. Another call was made from mobile phone number 9811008825 to Shivani Bhatnagars landline 2726729 at 1:17 pm and the duration of the call was only 9 seconds. Then a call was made from 5018092 to the mobile phone number 9811008825 at 1:35 pm and the duration of which was 121 seconds. 80. At about 2:50 pm, one person came to Navkunj Apartments, entered his name

in the visitors register as Rajiv Bhatnagar and gave the purpose of his visit as delivering an invitation. Thereafter, the first call made to the police was at 6:13 pm by one Parul, an employee of Times of India from the phone number 3318543 and the dialed number was 100. At 6:20 pm, a call was given by the PCR to Police Station Mandawali and this was recorded in the form of DD No. 13-A (Exhibit PW9/A). At 6:30 pm, a call was received at the PCR number 100 from Shivani Bhatnagar's husband Rakesh Bhatnagar from their residences line. The information was recorded as Exhibit PW154/1. Upon receiving the said information, Sub-Inspector Radhey Shyam and SHO Satya Pal reached the spot (i.e. B-42, Navkunj Apartments) between 6:30 and 6:35 pm. Thereafter, Constable Rajesh Kumar was called to lift the finger prints. 10 chance prints were lifted from the scene of the crime on 23.01.1999 itself: (i) (ii) (iii) (iv) Q1 and Q9 from the glass tumbler; Q2, Q3, Q4 and Q5 from the polythene covering the sweet box; Q6 and Q10 from the tea cup; and Q7 and Q8 from the refrigerator.

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At this juncture, it may also be mentioned that three chance prints were lifted subsequently on 25.01.1999. They were: (i) (ii) 81. Q1 and Q2 from the perfume bottle; and Q3 from the lipstick.

Going back to the events of 23.01.1999, Mr Pawan Sharma pointed out that the statement of Rakesh Bhatnagar was recorded at 11:10 pm and the FIR 21/1999 was registered at 11:25 pm at Police Station Mandawali under Section 302 IPC. On 24.01.1999, the investigation was transferred to the Crime Branch and Inspector Sukhwinder Singh took over the same. On 25.01.1999, a towel, curtain and vest (baniyan) were seized from Navkunj Apartments. Between 25.01.1999 and

26.04.2000, the investigation remained with Inspector Sukhwinder Singh, when he handed over the investigation to Inspector Ranbir Singh, who, in turn, after some time, handed over the investigation to Inspector Ran Singh. 82. Ultimately, on

18.06.2002, Inspector Inder Singh took over the investigation.

In response to Mr Shushil Kumars submission that nothing had been done prior to 18.06.2002, Mr Pawan Sharma submitted that, on the contrary, prior to 18.06.2002 several steps had been taken. The call details of mobile phone number 9811008825 had been obtained. Similarly, the call details of the landline of Shivani Bhatnagars flat (2726729) at Navkunj Apartments as also the call details of the landline at Shivani Bhatnagars earlier residence at Sahyog Apartments (2251959) were also obtained. At this juncture, it may be pointed out that Shivani Bhatnagar resided at Sahyog Apartments between 17.12.1997 and September, 1998. The call details of phone numbers 3630252, 2029935 and 2024142, which were the landline numbers of the office and residence of R. K. Sharma at Mumbai, were also taken.

83.

Mr Pawan Sharma also pointed out that on 31.05.1999 and 02.06.1999, R. K.

Sharma had been asked to join the polygraph test. As per Exhibit PW206/1, it was

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clear that on that date, no meaningful inference could be drawn from the answers given by R. K. Sharma and, therefore, re-examination was suggested. A second report Exhibit PW206/3 in respect of the test dated 12.07.1999 indicated that R. K. Sharmas respiration was erratic and the test could not be conducted and that he be brought after he was certified as being medically fit. The third test report Exhibit PW206/5 dated 24.12.1999 indicates that R. K. Shurma did not attend and, therefore, insofar as the conduct of the polygraph test was concerned, the same stood closed.

84.

Mr Pawan Sharma submitted that the list of phone numbers given below were,

however, not investigated till 18.06.2002:(i) (ii) (iii) (iv) 332266 landline at Shri Bhagwans house; 301166 landline at Shri Bhagwans brothers house; 330292 landline at Ved Prakash Sharmas house; and 306611 landline in Smt. Raj Balas name, who resided in the same gali as Shri Bhagwan.

85.

Mr Pawan Sharma further submitted that prior to 18.06.2002, finger prints of several suspects and other persons were also taken and compared with the chance prints lifted on 23.01.1999 and 25.01.1999. He submitted that as per Exhibit

PW192/80, which is the report dated 24.02.1999, of the finger print expert, 31 persons finger prints were compared. It was found that Q1 of 23.01.1999 (on the glass tumbler) matched Rakesh Bhatnagars finger prints. There was nothing unusual about this because Rakesh Bhatnagar was Shivani Bhatnagars husband and they were residing together. Q2 of 25.1.1999 (from the perfume bottle) matched with Ms

Shevantis finger prints. Again, there was nothing unusual about this inasmuch as Ms Shevanti was Shivani Bhatnagars sister. The chance prints Q3, Q4, Q5 and Q6 of 23.01.1999 and the chance prints Q1 and Q3 of 25.01.1999 did not tally with the finger prints of any of the persons whose finger prints were taken and compared.

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With regard to the chance prints Q2, Q7, Q8, Q9 and Q10 of 23.01.1999, the report Exhibit PW192/80 indicated that they were unfit for comparison. 86. There is another report Exhibit PW192/82 dated 21.04.1999 which also

indicates that the chance prints did not tally with the finger prints of three suspects which were sent subsequently. Similarly, there are reports Exhibit PW192/82 dated 12.01.2000 and Exhibit PW192/88 dated 27.07.2000 indicating that the

chance prints did not tally with the finger prints of 2 and 52 other suspects/ persons, respectively. 87. Mr Pawan Sharma further submitted that the recovery of articles on

23.01.1999, as per Exhibit PW145/3 included the box of sweets (besan ke ladu) and the said articles were deposited in the malkhana on 24.01.1999. Apart from this, Rakesh Bhatnagar and other relatives were thoroughly interrogated and were even put to polygraph test but nothing incriminating was found against them.

88.

Coming back to the events after 18.06.2002, when the investigation was taken

over by Inspector Inder Singh, Mr Pawan Sharma submitted that the said Inspector Inder Singh was also the Investigating Officer of another murder case known as the Gola murder case. In that case, Inspector Inder Singh had received secret information that one Pradeep Sharma may be in a position to give some clues about Shivani Bhatnagars murder case. Mr Pawan Sharma submitted that on 23.07.2002, Shri Bhagwan was produced before the investigating officer and he was interrogated about the mobile phone number 9811008825, but as he had concealed his answers and nothing material was elicited from him at that point of time, Shri Bhagwan was allowed to go home. He was, however, arrested on 30.07.2002 and he made his disclosure statement (Exhibit PW132/29) on that date and revealed the phone calls made to R. K. Sharma. The second disclosure statement of Shri Bhagwan was made on 04.08.2002 (Exhibit PW132/30). Shri Bhagwan also pointed out the STD booths from which the calls were made on the date of the incident. The pointing out memo

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was Exhibit PW103/2. Exhibit PW60/1 was the production memo in respect of the counterfoil of car parking at Ashoka Hotel on 13.01.1999. The same had bore the number 9800. Exhibit PW132/32 is the report of the Forensic Science Laboratory which indicates that the signature of Shri Bhagwan tallied with the signature at the

delivery receipt of car bearing registration number HR 26 G 9800. According to Mr Pawan Sharma, this clearly implied that there was a meeting held on 13.01.1999 at Ashoka Hotel in which Shri Bhagwan participated. Relationship between R. K. Sharma and Shivani Bhatnagar 89. Mr Pawan Sharma made submissions with regard to the relationship between

R. K. Sharma and Shivani Bhatnagar. In this connection, he, first of all, submitted that R. K. Sharmas official mobile number was 9810003040 and Shivani Bhatnagars landline number at Sahyog Apartments was 2251959. Exhibit PW139/1 gives the call details of 9810003040. The details revealed that between these two numbers there were two calls each on 17.12.1997, 18.12.1997, 19.12.1997 and 22.12.1997. On 20.12.1997, there were, however, five calls. Referring to the call details further, Mr Pawan Sharma submitted that during the period December, 1997 to May, 1998, there were about 68 calls between these two numbers which clearly suggested that R. K. Sharma and Shivani Bhatnagar were known to each other and were talking to each other on more or less a daily basis. He further submitted that even when Shivani Bhatnagar went to London, the calls between her and R. K. Sharma continued. 90. Mr Pawan Sharma then drew our attention to the testimony of PW83

Mrs. Saijal Shah, who attended the course in London with Shivani Bhatnagar and shared an apartment with her. He submitted that Mrs. Saijal Shah stated that Shivani Bhatnagar used to receive phone calls from R. K. Sharma every day. The witness further stated that Shivani Bhatnagar was in love with him and was having an affair with him and that she was also pregnant. Mrs Saijal Shah further stated that Shivani Bhatnagar and R. K. Sharma used to have hour long phone conversations and that R.

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K. Sharma had started ignoring her, as a result of which Shivani Bhatnagar was upset. From the above deposition, Mr Pawan Sharma contended, that the prosecution has been able to establish that there was not only a friendship

between R. K. Sharma and Shivani Bhatnagar but that the friendship had developed into a full-blown love affair.

91.

Mr Pawan Sharma stated that Shivani Bhatnagar gave birth to a child (boy) on 19.10.1998. As there was somewhat of a fall-out between R. K. Sharma and Shivani Bhatnagar, the number of calls between the two declined significantly. At the same time, around October, 1998 onwards, the number of calls between R. K. Sharma and the other co-accused increased to a great degree right up to the date of the incident, when the calls between R. K. Sharma and the other co-accused stopped suddenly. Thus, according to Mr Pawan Sharma, the prosecution has been able to clearly establish that the relationship between R. K. Sharma and Shivani Bhatnagar developed from friendship to intimacy and ultimately resulted in their falling out. At that point of time, the calls between R. K. Sharma and the other co-accused and particularly Shri Bhagwan increased and ultimately came to a stop on the death of Shivani Bhatnagar.

92.

Mr Pawan Sharma referred to Exhibit PW135/28, which are the purported call details of mobile phone number 9811008825, which was allegedly owned/ used by Shri Bhagwan. Referring to the call details and particularly to the call IDs, Mr Pawan Sharma stated that on 13.01.1999, the movement of Shri Bhagwan can be traced out. He submitted that Shri Bhagwan left Gurgaon and was at Ashoka Hotel at around 12 noon. Thereafter, the mobile phone was used near Navkunj Apartments and finally at Gurgaon. This sequence was gathered from the phone calls made/ received at

different points of time through the aforesaid mobile number 9811008825. At 9:51 am a call was registered at Gurgaon. At 11:45 am, the call record disclosed the location to be at Sultapur. At 12:46 pm, the location was at Sarojini Nagar. It was stated that shortly thereafter, the phone was handed over by Shri Bhagwan to Satya

Prakash. At 1:22 pm and 1:25 pm, the location was at Teen Murti. At 1:26 pm, the location was at Aurangzeb Road. At 1:38 pm, at Sarojini Nagar, at 2:13 pm at NHCI Pragati Maidan, at 2:20 pm at Bhogal, at 2:28 pm at Sakarpur, at 2:30 pm at Preet Vihar, at 2:53 pm at Shiva Opticals, at 3:23 pm at Shankar Bhavan, at 3:50 pm at Jukaso Inn Sunder Nagar and at 5:25 pm at Yasin Plaza, Gurgaon. Thus, according to Mr Pawan Sharma, the prosecution case with regard to the meeting at Ashoka Hotel on 13.01.1999, stands fully corroborated by the call records of mobile phone number 9811008825. He submitted that the Maruti Esteem car bearing registration number HR-26-G-9800 was brought by Shri Bhagwan. From Ashoka Hotel, after Shivani Bhatnagar had left, on 13.01.1999, R. K. Sharma, Satya Prakash, Ved Prakash and Ved Prakash @ Kalu boarded the said car. Shri Bhagwan did not go in the car and had handed over his mobile phone to Satya Prakash. Thus, it is the location of the cells from which various calls were made using the mobile phone number 9811008825 that the prosecution has sought to piece together the movement of Shri Bhagwan from Gurgaon to Ashoka Hotel at Delhi and thereafter of Satya Prakash along with R. K. Sharma, Ved Prakash and Ved Prakash @ Kalu in the said car to Navkunj Apartments and their return. Satya Prakash ultimately returned with the car and the mobile phone to Gurgaon in the evening. According to Mr Pawan Sharma, the meeting on

13.01.999 was crucial inasmuch as R. K. Sharma had shown the victim (Shivani Bhatnagar) to Shri Bhagwan, Satya Prakash, Ved Prakash and Ved Prakash @ Kalu at Ashoka Hotel and had also taken them (except Shri Bhagwan) to Navkunj Apartments to show the place of residence of Shivani Bhatnagar. Car HR-26-G-9800 93. According to Mr Pawan Sharma, the Esteem car HR-26-G-9800 belonged to

Shri Bhagwan. Although he was not the recorded owner but it was throughout used by him. He submitted that as per Exhibit PW77/4, which is the production-cumseizure memo in respect of the delivery receipt booklet of the said car, it is apparent that the car was initially delivered to P. C. Bhatia from one Maan Singh

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PW77/3 is the delivery receipt in respect of the delivery of the car to Ravinder Shokeen from Shri Bhagwan. The same has been signed by Shri Bhagwan and the same was sent to the Forensic Science Laboratory for comparison with the handwriting of Shri Bhagwan. The report Exhibit PW132/32 indicates that the

signature matches Shri Bhagwan's handwriting specimen. Although the ownership of the car was transferred from one Dayanand Kataria to Maan Singh, then to P. C. Bhatia and then to one Venkateshwar Girish, the delivery receipts showed that the car was with Shri Bhagwan. Thus, according to Mr Pawan Sharma the link between the car bearing number HR-26-G-9800 and Shri Bhagwan stands established and this further corroborates the prosecution version of the meeting which was held on 13.01.1999. Call details of mobile number 9811008825 94. Mr Pawan Sharma, while making submissions with regard to the call details of

the mobile phone number 9811008825, which allegedly belonged to Shri Bhagwan, submitted that several details and numbers have been blanked out from Exhibit PW135/28 and there are several changes in the phone numbers but these have all been done to give benefit to R. K. Sharma, who was a high ranking police officer. He even suggested that perhaps the police officials could have colluded in doing so. But, according to Mr Pawan Sharma, it does not enable us to detract from the truth that Shri Bhagwan was making and receiving calls to and from R. K. Sharma on the said mobile phone number 9811008825. Mr Pawan Sharma made detailed submissions with regard to the various entries made in the call details of Exhibit PW135/28 which shall be dealt with subsequently in this judgment. He, however, submitted that during the crucial period, entries were tampered with, but this did not enable us to reject all the other call details. He also submitted that R. K. Sharma has not denied having made calls to mobile phone number 9811008825 but has also stated that he used to talk to one Raju on this number. This can be discerned from the question and answer number 135 in the Section

313 Cr. P.C statement made by R. K. Sharma, where he has

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denied knowing Shri Bhagwan but has admitted that he was talking to Raju on the mobile phone number 9811008825, who was allegedly a sub-contractor doing repair work in Gurgaon in January, 1999 in the house owned by his wife. 95. Mr Pawan Sharma also submitted that Shri Bhagwan had taken a false plea of

alibi and having failed in proving his case of alibi, the prosecution case stands firmly established insofar as Shri Bhagwan is concerned.

Regarding R. K. Sharma 96. Mr Pawan Sharma submitted that PW4 Ravindra Jagan Nath Shinde,

Superintendent Manager, Vigilance in Mumbai and PW25 D. T. Sarode, Vigilance Officer, MTNL, Mumbai, gave the call details of two landline numbers, namely, 3630252, which was installed at the residence of R. K. Sharma and 2029935, which was installed at the office of R. K. Sharma. Exhibit PW25/1-4 is the call details. According to Mr Pawan Sharma, there is no allegation of tampering insofar as these call details are concerned. He submitted that the number of calls made to Shivani Bhatnagar dropped through time and particularly after October, 1998. The last call made by R. K. Sharma to Shivani Bhatnagar was on 05.01.1999 from the above landlines. In the meanwhile, from October, 1998 onwards, there was an increase in the number of calls to Gurgaon and particularly to Shri Bhagwan. 97. PW26 Sevanti, who is Shivani Bhatnagar's sister, had stated that Shivani

Bhatnagar gave birth to a male child on 19.10.1998 and Shivani Bhatnagar had asked her to call R. K. Sharma to inform him of the birth of the child. She conveyed the message on the next day but, according to the said witness, R. K. Sharma sounded indifferent. 98. Mr Pawan Sharma then drew our attention to the testimony of PW47

Mukundam Nair, who was P.A to R. K. Sharma when he was in Mumbai. The said

witness had stated that when R. K. Sharma had gone for his course at Pune, he had given his contact number to Mukundam Nair as 9822028128. According to Mr Pawan Sharma, this number belonged to one Suresh Kukreja (PW51), who was a friend of R. K. Sharma. Mr Pawan Sharma also referred to the testimony of PW54 Kulwant Singh, who provided cars to officials of Air India. He submitted that this witness had stated that a car was sent to R. K. Sharma on 13.01.1999 at room No. 611, Ashoka Hotel, but R. K. Sharma had already checked out before the vehicle arrived. According to Mr Pawan Sharma, this corroborates the prosecution version that on 13.01.1999, R. K. Sharma and some of the other co-accused left in the white Esteem car bearing registration number HR-26-G-9800, allegedly belonging to Shri Bhagwan, towards Navkunj Apartments. He also referred to the testimony of PW84 Surender Singh, who was the General Manager, Vigilance, Air India, who stated that on 13.01.1999 R. K. Sharma was in Ashoka Hotel and had a meeting at 10 am. He also stated that he went to meet him at 12 noon. R. K. Sharma opened the door but was in a haste to leave the room. Another witness PW95 Avinash Chander, who was the Senior Manager, Security, Air India, also testified to the presence of R. K. Sharma at Ashoka Hotel on 13.01.1999. He stated that he had a meeting with regard to vigilance with R. K. Sharma on that date between 11:15 to 11:30 am for about 15-20 minutes. 99. Mr Pawan Sharma then drew our attention to the testimony of PW124 Rai

Singh Mandiwal, who was the Superintendent of the District Jail, Gurgaon. PW124 stated that he knew R. K. Sharma and that R. K. Sharma had visited the District Jail, Gurgaon on 18.07.2002. At that point of time, Ved Prakash Sharma was in jail. He also stated that it was a jail inspection by R. K. Sharma as he was D.G. Prisons, Haryana at that time.

100.

Mr Pawan Sharma stated that DW9 Hari Om Sharma, who is stated to have

been residing at Rewari and looking after R. K. Sharmas agricultural land, was introduced by the defence to contend that he was the one who used to attend to calls in

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Shri Bhagwans house and Kishoris house. Mr Pawan Sharma stated that Hari Om Sharmas version is not believable and he asserted that the calls were actually made to Shri Bhagwan at his residence by R. K. Sharma and not to Hari Om Sharma as suggested by the said witness.

Regarding Satya Prakash 101. With respect to the appellant Satya Prakash, Mr Pawan Sharma stated that as

per the testimony of PW17 Visheshwar Dubey, Satya Prakash, Shri Bhagwan, Ved Prakash @ Kalu and Ved Prakash Sharma were known to each other and used to meet at Ved Prakash Sharmas house every 15-20 days. Mr Pawan Sharma further

submitted that Satya Prakashes story that he was not even in Delhi on 13.01.1999 and that he was at village Utlodha cannot be believed. He submitted that although PW43 Sajjan Pal Kataria, the Block Development Officer, Jhajjar, Haryana had brought the Panchayat register (copy whereof is Exhibit PW43/DA), which showed that there was a meeting on 13.01.1999 of the Gram Panchayat, the signatures of Gobind Ram were different from those at page 183, volume 15 and similarly Bishambhers signatures were also different from those at page 183, volume 15. Therefore, he cast doubts on the veracity of the said register entry showing the panchayat meeting. Mr Pawan Sharma, referring to the Mumbai visit of Satya Prakash and stay at Hotel Milan, drew our attention to the testimony of PW125, Sheikh Zahid Aziz, who was the receptionist at hotel Milan. He had produced the check-in register for the period 01.11.1997 to 10.03.1999 (Exhibit PW125/1) as also the general ledger (Exhibit PW125/2). The entry shown is of one S. P. Singh. According to Mr Pawan Sharma this is a fictitious entry and this was actually Satya Prakash. He then referred to the testimony of PW129 Imran Sheikh, who stated

that entry No. 3831 was in his hand and was in respect of one S. P. Singh. He also stated that two adults had accompanied S. P. Singh. However, he could not identify them. He also pointed out that calls were made from Milan Hotel to Deepak, a taxi driver as also to R. K. Sharma. PW 146

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Sayyad Abdul Sattar, who was an accountant at Hotel Milan, also referred to the calls made from the hotel (Mark PW146/A-D). But, he stated that the information was not available on the computer. He also stated that Exhibit PW125/2 was the original ledger for the period 01.04.1998 to 25.10.1998 but the bills were not available. According to Mr Pawan Sharma, PW179 Head Constable Harvinder Singh proved the pointing out memo of R. K. Sharmas residence at the instance of Satya Prakash. PW187 Inspector K. P. Singh proved the recovery of a photo on 25.08.2002 of Shivani Bhatnagar from the father-in-law of Satya Prakash. PW186 Sub-Inspector Sajjan Singh is also a witness to the recovery of a photo of Shivani Bhatnagar from the father-in-law of Satya Prakash from village Khan Pur.

Regarding Pradeep Sharma 102. Mr Pawan Sharma submitted that Pradeep Sharma was the person who actually He submitted that Pradeep Sharma entered Navkunj

killed Shivani Bhatnagar.

Apartments on 23.01.1999 at about 2:50 pm and he gave his name as Rajiv Bhatnagar in the entry register maintained at Navkunj Apartments. PW87 Hira Lal, who was the Chowkidar at Navkunj Apartments, was on duty on 23.01.1999 had confirmed that at 2:50 pm, one person had come and entered his name as Rajiv Bhatnagar and gave the other details mentioned earlier. Mr Pawan Sharma submitted that Pradeep Sharmas relationship with Satya Prakash stands established as per the testimony of PW88 Naresh Chand. He also submitted that the connection between Pradeep Sharma and the rest of the accused is clearly established by evidence on record as mentioned above. He submitted that PW141

Constable Rajesh Kumar lifted chance prints from the flat and the result of the examination conducted was that chance print Q3 lifted on 23.01.1999 matched with Pradeep Sharmas given finger impressions S3, S4, S5 and S6. Thus, according to Mr Pawan Sharma, Pradeep Sharma was clearly inside the flat on 23.01.1999 as his finger print was found on the polythene covering of the sweet

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box. According to Mr Pawan Sharma this is clear scientific evidence of the presence of Pradeep Sharma in the said flat. 103. Mr Pawan Sharma relied on the following decisions:(i) (ii) (iii) (iv) (v) (vi) (vii) Firozuddin Basheerudeen v. State of Kerala: (2001) 7 SCC 596; Balram Prasad Agrawal v. State of Bihar: (1997) 9 SCC 338; Gajraj v. State: Crl. A 461/2008 decided on 18.03.2009 (DHC)(DB); Anthony DSouza v. State of Karnataka: (2003) 1 SCC 259; Joseph v. State of Kerala: (2000) 5 SCC 197; State of West Bengal v. Mir Mohd. Omar: (2000) 8 SCC 382; Visveswaran v. State : (2003)6 SCC 73

(viii) State of U.P v. Anil Singh: AIR 1988 SC 1998; (ix) Dost Mohd. v. State: Crl. A. 385/2008 decided on 01.02.2010 (DHC)(DB); (x) (xi) (xii) Sidhartha Vashisht @ Manu Sharma v. state: (2010) 6 SCC 1; Baso Prasad v. State of Bihar: AIR 2007 SC 1019; Mahender v. State: Crl. A. 143/1997 dated 04.06.2010 (DHC)(DB);

(xiii) Sandy @ Ved Prakash v. State:Crl. A.626/2008 dated 19.02.2010 (DHC)(DB); (xiv) Harpal Singh v. State: Crl. A. 362/2008 dated 25.05.2010 (DHC)(DB); and (xv) State v. Navjot Sandhu @ Afsan Guru : (2005) 11 SCC 600.

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104.

Mr Hariharan, the learned counsel appearing for the acquitted person Ved

Prakash @ Kalu in the States appeal (Crl. A. 752/2009), submitted that there was no evidence connecting Ved Prakash @ Kalu either with the conspiracy or with the articles, namely, gold chain and camera. In fact, the camera was not even put to a Test Identification Parade. He submitted that it is for this reason that the trial court, finding no evidence against the appellant Ved Prakash @ Kalu, acquitted him as also Ved Prakash Sharma. He, therefore, submitted that insofar as the appellant Ved Prakash @ Kalu is concerned, the impugned judgment ought not to be interfered with and the States appeal be dismissed. Arguments in rejoinder: Mr Sushil Kumar for the appellant R. K. Sharma 105. Mr Sushil Kumar, the learned senior counsel appearing on behalf of the

appellant R. K. Sharma, submitted that :(1) Although the trial court had observed that in a case of circumstantial evidence, before a finding of guilt can be returned, the circumstances should be such as to exclude every possible hypothesis except the one to be proved and that there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and must show that in all probability the act must have been done by the accused, but, the chain of circumstances or the chain of evidence has not even been discussed by the trial court. Despite this, the appellant has been convicted;

(2)

Referring to paragraph 146 of the impugned judgment, Mr Sushil Kumar submitted that the trial court recognized the fact that the prosecution had failed to establish that the mobile phone bearing No. 9811008825 was owned by Shri Bhagwan. Yet, the trial court concluded that it was widely

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used for conversation by the accused persons. He submitted that if the basic call record itself is not reliable, all other corresponding records would have no meaning;

(3)

With regard to the prosecutions alleged motive that Shivani Bhatnagar had been done to death because she had threatened to expose R. K. Sharma and the other ancillary motive of the removal of secret documents, gold chain and camera as also the allegation that Pradeep Sharma had demanded ` 3 lacs for the job, it was submitted by Mr Sushil Kumar that in paragraph 106 of the impugned judgment itself it has been recognized that there is not an iota of evidence that ` 3 lacs was paid to Pradeep Sharma. He further submitted that the prosecution has failed to establish that there was any threat meted out by Shivani Bhatnagar to R. K. Sharma that he would be exposed. There is no evidence with regard to the secret documents or the hiring of the assassin or the retrieval of the documents or the payment of ` 3 lacs. Thus, according to Mr Sushil Kumar, the prosecutions allegation with regard to motive is clearly disproved;

(4)

With regard to the alleged meeting of 13.01.1999 at Ashoka Hotel, Mr Sushil Kumar submitted that there is no evidence as to how Shivani Bhatnagar went to Ashoka Hotel. As per the prosecution, she took a taxi to Ashoka Hotel but the taxi driver PW72 turned hostile and as such, there is no evidence as to how Shivani Bhatnagar went to Ashoka Hotel. Mr Sushil Kumar submitted that actually Shivani Bhatnagar never went to Ashoka Hotel on 13.01.1999 as there was no reason for her to go there. He submitted that as per the prosecution, the reason why Shivani Bhatnagar was called by R. K. Sharma to Ashoka Hotel was to show her to the assailant. But, even as per the prosecution case, the alleged

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assailant Pradeep Sharma was not even present at Ashoka Hotel. Therefore, there was no reason whatsoever for Shivani Bhatnagar to have been called to Ashoka Hotel;

(5)

Mr Sushil Kumar also submitted that the call details of Rakesh Bhatnagars mobile phone number 9811156455 have not been made available to the Court although the same were available with the prosecution. According to him, the said call details have been suppressed by the prosecution because the falsity of the claim that a call was received by him at 3:30 pm on 23.01.1999 would be revealed;

(6)

Mr Sushil Kumar also stated that as per the prosecution, Pradeep Sharma had gone to B-42, Navkunj Apartments for the purposes of inviting Rakesh Bhatnagar. According to the prosecution Pradeep Sharma had brought an invitation card. But, no invitation card has been produced by the prosecution as part of the evidence. Mr Sushil Kumar submitted that although it has come in evidence that Shivani Bhatnagars body was lying in the front bedroom and blood was oozing from it, her blood group was not known. On the other hand, the blood group on the two knives, bed sheet and metallic tawa were found to be of group A. But, as the blood group of the victim was not known, the blood grouping done on these articles, according to Mr Sushil Kumar, would be irrelevant;

(7)

Mr Sushil Kumar also submitted that as per the prosecution when R. K. Sharma went to Pune on 18.01.1999, he gave the number of his friend Suresh Kukrejas phone as the contact number to his staff in Mumbai. Mr Sushil Kumar submitted that R. K. Sharma was an experienced senior police officer and if he were to use this number for a conspiracy to

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commit a murder then, surely, he would not make it known to his staff at Mumbai;

(8)

It was also submitted that the call records were unreliable and in any event, even if calls were established between R. K. Sharma and the coaccused, they do not

straightaway lead to the conclusion that the calls were for the purposes of a conspiracy. He submitted that the prosecution case must stand or fall on its own legs and for this proposition he relied upon a decision of the Supreme Court in *Sharad Birdhichand Sarda v. State of Maharashtra* : (1984) 4 SCC 116.

Mr Goswami for the appellant Pradeep Sharma 106. Mr Goswami submitted in rejoinder that the chance prints sent for comparison He submitted that the were the result of manipulation of prosecution evidence.

prosecution has remained steadfast in its allegation that the call made by Shivani Bhatnagar to Rakesh Bhatnagar was at 3:30 pm. Even if an approximation of

plus/minus 10 minutes is taken, the call could have been made between 3:20 and 3:40 pm on 23.01.1999. If this were to be so, then Shivani Bhatnagar was certainly alive up till 3:20 pm. If it is assumed that Pradeep Sharma is the person who entered his name in the entry register as Rajiv Bhatnagar, then the return entry is recorded at 3:10 pm, which clearly demonstrates that when Pradeep Sharma left the premises, Shivani Bhatnagar was alive and well. Therefore, according to Mr Goswami, even going by the prosecution story, Pradeep Sharma could not have been convicted of the crime.

Mr Sarfaraz Hussain for the appellant Satya Prakash 107. Mr Sarfaraz Hussain appearing on behalf of the appellant Satya Prakash in his

rejoinder submitted that although it is alleged that Satya Prakash was a tenant of Shri Bhagwan, there is no evidence of the same. He reiterated that Satya Prakash was the

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Sarpanch of village Utlodha and that there was a Gram Panchayat meeting on 13.01.1999 in the village and this clearly disproved the prosecution case that Satya Prakash had met R. K. Sharma at Ashoka Hotel, New Delhi on that date. PW89 Inder Prakash testified in his examination-in-chief that his brother Satya

Prakash remained in the village during the entire month of January, 1999. Mr Sarfaraz pointed out that the prosecutors request for cross-examination was rejected as he had not resiled from his statement made under Section 161 Cr. P.C. PW89 Inder Prakash further deposed that sports functions had been organized between 18.01.1999 and 24.01.1999 and that Satya Prakash remained in the village during that period. The prize distribution function was held on 24.01.1999. PW71 Onkar Singh, who is the father of Shri Bhagwan, also stated that he did not know Satya Prakash and that Satya Prakash was not a tenant of Shri Bhagwan. It was further submitted that the prosecution has not been able to establish any link between Satya Prakash and the mobile phone number 9811048912. He further submitted that the alleged signature made in the register of Hotel Milan, Mumbai, was not compared with the specimen signature of Satya Prakash and, therefore, the same could not be linked. He also submitted that the recovery of ` 3 lacs has also not been established.

Discussion: 108. We may say straightaway that insofar as the State appeals (Crl. A. 751/2009

and Crl A 752/2009) in respect of Ved Prakash Sharma and Ved Prakash @ Kalu are concerned, the same are liable to be dismissed. The trial court has not committed any error in acquitting Ved Prakash Sharma and Ved Prakash @ Kalu. They were, inter alia, sought to be implicated on the basis of an alleged recovery of a gold chain belonging to the deceased at the instance of Ved Prakash Sharma and a Kodak camera (with the letters RB engraved on it) at the instance of Ved Prakash @ Kalu. Both these items were allegedly removed by Pradeep Kumar from the scene of crime and handed over to the said persons. The trial court has disbelieved the alleged recoveries

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and from the evidence on record there is no reason for us to disagree with the finding. Furthermore, there is no specific incriminating evidence of a significant nature as would enable us to conclude that the said Ved Prakash Sharma and Ved

Prakash @ Kalu had any involvement in the alleged conspiracy to kill Shivani Bhatnagar. The trial court has rightly acquitted them.

109.

As regards the others, the first thing that needs to be investigated is whether

Pradeep Sharma killed Shivani Bhatnagar. Because, if he did not then the entire case of conspiracy and murder as against the others also falls to the ground. However, if Pradeep Sharma is found to be the killer, then it will still have to be established that he killed at the behest of the others.

Was Pradeep Sharma the killer of Shivani Bhatnagar? 110. The prosecution has relied on, inter alia, the following key elements to try and

establish that it was Pradeep Sharma who was the actual killer:1. The Entry Register Ex.PW61/1 at Navkunj Apartments; 2. The chance prints on the polythene cover of the sweet box recovered from the scene of crime.

1. 111.

Register Ex.PW61/1 Ex. PW61/1 is the entry (visitors) register of Navkunj apartments which was

maintained at the gate. Visitors to Navkunj apartments were required to make entries giving details of their name, address, time of entry, time of exit, apartment to be visited, purpose of the visit and signature. There is an entry at page 47 of the said register which shows that a person by the name of Rajiv Bhatnagar, H.No. 311, Tribune Colony, Chandigarh had entered the apartments at 2:50 pm and had left at 15:10. He had indicated his purpose of visit as invitation and the flat to be visited was shown to be B-42, Shivani Bhatnagars flat. As noticed above, the prosecution

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case is that Rajiv Bhatnagar was a fictitious name and that it was actually Pradeep Kumar who had made the said entry in the register and who had gone to flat B-42.

112.

PW132 Ms Deepa Verma, Sr. Scientific Officer (Documents), Forensic Science

Lab., Govtof NCT of Delhi, compared the questioned entry Q1 (Ex. PW132/23 in page 47 of register Ex. PW61/1) with specimen writing of Pradeep Sharma. Her report is Ex. PW132/24. In court, she testified to the following effect: The examination of the questioned document with standard writings was made by me on the basis of examination of original document and no photographs were prepared for the purpose red mark Q1 at page no.47 of Ex.PW61/1 was examined by me after comparing the same with specimen writings Ex. PW132/1 to PW132/22 (S-81 to S-102) and admitted writings A-15/1 to A-25/1 and A-26 to A-132 attributed to Pradeep Sharma and after careful examination, I came to the conclusion that the person who wrote the red enclosed writings and signatures stamped and marked S-81 to S-102, A-15/1 to A-25/1 and A-26 to A132 also wrote the red enclosed hand writings and signatures similarly stamped and marked Q1. The said entry is Ex. PW132/23 which

includes all the writings except 15.10 at point X i.e. the author of the writing and signature in Ex PW132/23 is the same person who is the author of the aforesaid standard writings.

113.

In fact, there can be no controversy with regard to the above finding because

even Pradeep Sharma has admitted in answer to Q.285 in his statement under section 313 Cr PC that he wrote the questioned writing Ex. PW132/23. However, he stated that the he was made to write the same by the police in the Crime Branch Office, Adarsh Nagar on 21.07.2002 when, in compliance to Notice Ex. PW194/DB, he

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appeared before PW203 Inspector Inder Singh and other police officials. He also maintained that Ex. PW61/1 is a fabricated document.

114.

Thus, while there can be no dispute with regard to the fact that entry Ex.

PW132/23 in the register Ex. PW61/1 is in the hand of Pradeep Sharma, the issue which needs to be resolved is whether the entry was made on 23.01.1999 or on 21.07.2002.

115.

A doubt has been raised with regard to the existence of the register Ex. PW61/1

and the entry Ex. PW132/23 on 23.01.1999 by the learned counsel for Pradeep Sharma by submitting that had the entry been genuine and had it been in existence, then, why did the police go to Chandigarh for the first time on 03.10.2002 (after over 2 years and 9 months)? The only police officer who went to Chandigarh to verify as to whether there was a person by the Name of Rajiv Bhatnagar residing at H.No. 311, Tribune Colony or not, was PW186 SI Sajjan Singh. The said witness (PW186) stated that he joined the investigation of the case in August 2002. He further stated that on 03.10.2002, he went to the office of The Tribune, Chandigarh to enquire as to whether Rajiv Bhatnagar or Mr Adhikari were their employees and were residents of Tribune Colony. He met PW29 Anil Pandahi (Manager Accounts) and PW30 Rajeshwar Chopra (Circulation Manager) who gave their written replies on 04.10.2002. He also visited the address 311/30 A and 311A/30A and 314 and 314A and recorded the statements of PW40 Indu Sharma, PW41 Alopi Prasad, PW42 Gurmeet Singh and Dalip Kumar.

116.

PW40 Indu Sharma testified in court that she was residing in House No. 311

since 2000 and that prior to that one Kanchan used to reside in the said house. She further stated that no person by the name of Rajiv Bhatnagar or Adhikari lived in house no.311 ever since she was in the colony even in 1999. She also testified that

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she had not seen accused Pradeep residing in the said house. In cross-examination she confirmed that the police had not contacted her prior to 03.10.2002.

117.

PW41 Alopi Prasad testified that he was a resident of house no.311A and was living there since 1994. He further indicated that the ground floor is given the no.311 and the first floor is given the no.311A. Furthermore, one Kanchan used to live in house no.311 since 1994 but, she left in 1999 or 2000. He also stated that no person by the name of Rajiv Bhatnagar or Adhikari lived in house no.311. All the accused and particularly Pradeep were shown to the witness and he stated that none of them resided in house no.311 at any point of time. In cross-examination, he revealed that he was questioned by the police for the first time on 03.10.2002. The testimony of PW42 Gurmeet Singh singh is to similar effect.

118.

PW29 Anil Pandahi, Manager Accounts, Tribune Trust, stated that no person by the name of Rajiv Bhatnagar or Adhikari worked with the Tribune Trust. PW30 Rajeshwar Chopra, Circulation Manager, The Tribune, Chandigarh stated that there is no house no.311 or 314 in Tribune Colony, Sector 29D, Chandigarh and there were no Tribune houses in sector 30A, Chandigarh.

119.

Upon examining the testimonies of PW186 SI Sajjan Singh, PW29 Anil

Pandahi (Manager Accounts), PW30 Rajeshwar Chopra (Circulation Manager), PW40 Indu Sharma, PW41 Alopi Prasad and PW42 Gurmeet Singh, it is clear that:(i) Nobody by the name of Rajiv Bhatnagar or Adhikari worked at the Tribune Chandigarh; (ii) Nobody by the name of Rajiv Bhatnagar or Adhikari resided at house no.311 sector 30A, Chandigarh; (iii) Pradeep Sharma also never resided at house no.311 sector 30A, Chandigarh;

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(iv)

There is no house no.311 or 314 in Tribune Colony, Sector 29D, Chandigarh;

(v)

The police sought to verify the name and address in the entry in the register Ex. PW61/1, for the first time, in 03.10.2002.

120.

At this point, two possibilities appear to exist: One, that Pradeep Sharma made a fictitious entry in the register on 23.01.1999 and, two, that Pradeep Sharma was made to write the said entry in his hand on 21.07.2002 by the police. However, it is only further evidence which would reveal as to which of these two possibilities stands established.

121.

Let us now consider the testimony of PW87 Hira Lal who was a security guard at Navkunj Apartments from 1994 to August 1999. He stated that there was a visitors register at the gate and visitors had to make an entry in the register at the time of entrance. He also stated that he was on duty on the entrance gate on

23.01.1999 and that the time mentioned at point X over the entry Q1 in the visitors register Ex. PW61/1 is written in the hand of the visitor. Again said, it might have been written by the visitor. On his stating that some person might have come to visit the flat of Shivani Bhatnagar on that day, the Special Prosecutor requested that he be permitted to cross-examine the witness. Permission was granted by the trial court. On cross-examination by the learned Special Prosecutor, the said PW87 Hira Lal stated that he did not remember if any person by the name of Rajiv Bhatnagar had come to Navkunj Apartments at 2.50 pm for going to flat B-42. He denied the suggestion that entry at point Q1 was made in his presence. Subsequently, he admitted the suggestion that on 23.01.1999 at 2.50 pm one person came to the gate of Navkunj Apartments and made an entry in the register and wrote his name as Rajiv Bhatnagar and address as H.No.314, Tribune Colony, Chandigarh and had indicated the number of the flat he wanted to go to as B-42 for the purpose of invitation. He also admitted the

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suggestion that he and Sheelajit (supervisor) were present at the gate on duty at 2.50 pm. He, of course, stated that he had not noticed that the said person had any box of sweets in his hands. Again said, he was not carrying any sweets box. He stated that after making the entry that person went towards the apartments.

122.

PW87 Hira Lal was asked as to whether whichever visitor entered into the premises of Navkunj Apartments on 23.01.1999 during his duty hours had made an entry in the visitors register Ex. PW61/1? After seeing the register, he replied in the affirmative. He, however, denied the suggestion given by the learned Special Prosecutor that he had recorded the time of departure of the said person as 15:10 in the register Ex. PW61/1. He was confronted with portion marked B to B in Ex.PW87/1 wherein it was so recorded. He was also confronted on several other aspects of his testimony.

123.

PW79 Shilajeet Singh was the Security Supervisor at Navkunj Apartments on 23.01.1999. Like PW87 Hira Lal, this witness also was resiling from his statement to the police, hence, the learned Special Prosecutor was allowed to cross-examine him. He admitted that the register Ex. 61/1 was seized from him either on 23.01.1999 or 26.01.1999 by Delhi Police vide seizure memo Ex. PW79/1 and the same bears his signature at point A. He, however, stated that entry marked Q1 in Ex. PW61/1 was not made in his presence. PW79 was confronted with various portions of his

statement Ex. PW79/2 under section 161 Cr.P.C.

124.

If we examine the seizure memo Ex. PW79/1, we find that it clearly mentions that the visitor register has entries of 23.01.1999 also and there is specific mention of the entry concerning Rajiv Bhatnagar, H.No.311, Tribune Colony, Chandigarh, B42, Invitation Rakesh Bhatnagar 2.50 15.10 sd/- initial signature.

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125.

PW183 Inspector Satya Pal Singh stated that he left the spot at about 2.15 am (i.e., on 24.01.1999) in the night and came downstairs and contacted the security guard and he saw the register and demanded the same on which the security guard told him that he would deliver it after taking permission from his employer. He further stated that he instructed the said guard not to make any further entry in the said register and to keep it in safe custody.

126.

PW167 ACP P.P. Singh, stated that he visited the spot on 24.01.1999 as well as on 25.01.1999 and he, inter alia, recorded the statements (Ex PW87/1 & Ex. PW79/1) of PW87 Hira Lal and PW79 Shilajeet. He further stated that on 26.01.1999 he again went to the spot and that on that day he seized the visitors register (Ex. PW61/1) maintained by the security guard of Navkunj Apartments. He also stated that the said register was for the period 07.01.1999 to 23.01.1999 and was seized vide memo Ex.PW79/1 on which he had obtained the signature of PW79 Shilajeet Singh at point A who had produced the said register on that day. In the course of his cross-

examination, PW167 revealed that he had not looked for the visitors register on 24.01.1999 nor had he, on that day, asked the family members of the deceased as to who had visited their flat on 23.01.1999. After looking at the register Ex.PW61/1, the said witness stated that the second last entry on 23.01.1999 was in respect of Abhijeet Kumar who is the brother of the deceased. He also revealed that he did not contact the said Abhijeet Kumar at any point of time. He also admitted that as per the said register one Basruddin Dhobbi had visited the said flat on 23.01.1999 at 3.45 pm and left at 4.00 pm. PW167 PP Singh further disclosed in his cross-examination that enquiries were made from the said person one or two days after the seizure of the said register but no statement was recorded.

127.

A shoddy investigation in respect of the register Ex.PW61/1 apart, a conjoint reading of the testimonies of PW79, PW87, PW167, PW183 and the seizure memo

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Ex. PW79/1, tends to suggest, notwithstanding PW79 and PW87 being hostile, that the register Ex. PW61/1 was seized from PW79 on 26.01.1999 and at that point of time the entry marked Q1 in the said register was in existence. If this were

so, it would definitely tend to rule out the possibility that Pradeep Sharma was forced to make the said entry in the register on 21.07.2002 as suggested by him. Consequently, it would indicate that Pradeep Sharma had made the said entry Ex.PW132/23 in the said register Ex.PW61/1 on 23.01.1999. In other words, his presence at Navkunj Apartments would stand established.

2. 128.

The chance prints PW141 Constable Rajesh Kumar, a member of the crime team, stated that on

23.01.1999 when he arrived at B-42 Navkunj Apartments, the injured had already been removed to hospital. He stated that he lifted ten chance prints from the spot. Two chance prints (Q1 & Q9) from two drinking glass tumblers which were on the table, four chance prints (Q2, Q3, Q4 & Q5) from the polythene cover (Ex.PW8/9) of the sweet box lying on the mooda, one chance print each (Q6 & Q10) from the tea cup lying on the tray which was on a sofa type mooda and from the tea cup lying on the floor of the drawing room and two chance prints from the refrigerator in the kitchen. PW141 proved the scene of crime visitation report Ex.PW141/1 which

indicates the time of examination as 7.00 pm on 23.01.1999. He further stated that the original Ex.PW141/1 was handed over to the IO and the carbon copy of Ex.PW141/1 alongwith the lifted chance prints were sent to the Finger Print Expert, Finger Print Bureau, Malviya Nagar. 129. On 25.01.1999, PW141 was again called to the spot to lift fingerprints,

whereupon he lifted three chance prints two (Q1 & Q2) from the perfume bottle and one (Q3) from the lipstick. The report is Ex.PW141/2. As per the said witness, the original was given to the IO and the carbon copy alongwith the lifted chance prints were sent to the Finger Print Bureau, Malviya Nagar.

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130.

Ex.PW145/3 is the entry in the malkhana register which shows that, inter alia, the sweet box in the polythene cover (momi kagaz) was deposited in the malkhana on 24.01.1999.

131.

Ex.PW192/80 is a report dated 25.02.1999 of

the Director, Finger Print

Bureau, Delhi Police, Malviya Nagar

regarding the ten chance prints lifted on

23.01.1999 and three chance prints lifted on 25.01.1999 from the spot. The report also indicates that the Bureau had received received specimen finger prints of 36 persons including Rakesh Bhatnagar (husband of deceased), B.S. Bhatnagar, Smt Muny Laxmi (maid servant), Wali (maid servant), Shivani Bhatnagar (deceased), Mrs Santosh (mother of the deceased), Ms Shevanti (sister of the deceased), Mr Satish Kumar (father of the deceased), Abhijit Kr (brother of the deceased), Mrs Vidhya (maid servant) and of 25 suspects. The names of the appellants did not figure in the said list.

132. under:

As per the said report Ex.PW192/80, the result of the examination was as

RESULT OF EXAMINATION 1. Chance print marked Q1 developed on 23.1.99 is IDENTICAL with Right index finger marked S-1 on the finger impression slip of Rakesh Bhatnagar (Inmate).

2.

The chance print marked Q2 developed on 25.1.99 is IDENTICAL with left index finger marked S-2 on the finger impression slip of Miss Shevanti (Inmate).

3.

Chance prints marked Q3, Q4, Q5 and Q6 developed on 23.1.99 and chance prints marked Q1 and Q3 developed on 25.1.99 are Not-identical with the finger/palm prints of the persons mentioned at para III(B) and (C).

4.

Chance prints marked Q3, Q4, Q5 and Q6 developed on 23.1.99 and chance prints marked Q1 and Q3 developed on 25.1.99 have been searched on S.D. Record and other available data bank of the Bureau and these prints remained UN-IDENTIFIED.

5.

Chance prints marked Q3, Q4, Q5 and Q6 developed on 23.1.99 and chance prints marked Q1 and Q3 developed on 25.1.99 have been searched on unidentified chance prints collection of the Bureau, however they remained UN-IDENTIFIED.

6.

Chance prints marked Q2, Q7, Q8, Q9 and Q10 developed on 23.1.99 are either hazy, partial, smudged and do not disclose sufficient number of ridge details in their relative positions for comparison, hence they are UNFIT and no opinion can be given regarding these prints.

This report Ex.PW192/80 puts aid to the argument that the chance prints from the polythene cover were not there on 23.01.1999 and were subsequently manufactured. The report clearly establishes that the said chance prints were in existence on 25.02.1999, much before the appellant Pradeep Sharma was interrogated on 21.07.2002. Therefore, it cannot be contended that the chance prints were prepared only on or after 21.07.2002 in order to implicate Pradeep

Sharma. The chance prints from the polythene cover of the sweetmeat box were lifted on 23.01.1999 itself and

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cannot be regarded as having been created as on that date Pradeep Sharma was not even in the imagination of the police.

133.

Ex.PW192/82 is another report dated 21.04.1999 of the Finger Print Bureau

when some more specimen finger/palm prints were sent for the purposes of comparison with chance prints Q3, Q4, Q5 and Q6 of 23.01.1999 and Q1 and Q3 of 25.01.1999. No matches were found.

134.

The damning evidence in respect of Pradeep Sharma is the report

Ex.PW192/97 dated 08.08.2002. The result of examination in the said report is as under:III 1. RESULT OF EXAMINATION Chance prints marked Q3, Q4, Q5 & Q6 developed on 23-01-1999 are IDENTICAL with right thumb, left index, left middle & right index finger impressions marked S3, S4, S5 & S6 respectively on the finger impression slip of Pradeep Sharma S/o Amresh Dev (suspect) r/o H.No.200, Roshan Garden, Najafgarh, Delhi.

2.

Chance prints marked Q1 & Q3 developed on 25-01-1999 are not identical with the finger/palm prints of the person mentioned at paragraph I (A)."

Chance prints marked Q3, Q4 and Q5 which were developed on 23-01-1999 were lifted from the polythene cover of the box of sweets. Chance print Q3 has matched with the specimen right thumb impression S3 of the Sharma. Chance print Q4 has matched with the specimen left finger impression S4 of Pradeep Sharma. And,

chance print Q5 was found identical with the specimen left middle finger impression S5 of Pradeep Sharma. This clearly establishes that there were finger impressions of both

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hands of Pradeep Sharma on the polythene covering the box of sweets. Interestingly, chance and Q6 was lifted from one of the teacups found at the scene of crime. The said chance print matches with the specimen right index finger impression S6 of Pradeep Sharma. It is, therefore, not correct that it is only chance print Q3 which has matched with the specimen finger impression of Pradeep Sharma as was sought to be urged on the part of the learned counsel for Pradeep Sharma. From the evidence with regard to chance prints, it is clear that Pradeep Sharma held the box of sweets which was covered in the polythene wrapper with both hands and that he had also held the teacup in his right hand. The presence of Pradeep Sharma inside Shivani Bhatnagars flat on 23-01-1999 stands established.

135.

Mr Goswami, the learned counsel for Pradeep Sharma, had argued that the

fingerprint report exhibit PW 192/97 was of a doubtful nature. His argument was founded on the basis of dates which appeared in the said report and exhibit PW 192/95. It was contended that the fingerprint report exhibit PW 192/97 bears the date 08-08-2002 whereas exhibit PW 192/95 shows that the fingerprint expert had conducted the examination on 21-08-2002. It was, therefore, questioned as to how the report could be dated 08-08-2002 when the examination itself had been conducted on 21-08-2002? This argument is easily negated upon a close scrutiny of the said two documents. Exhibit PW 192/97, which is undoubtedly the fingerprint report and is dated 08-08-2002, carries a note which the learned counsel seems to have missed. The note reads as under: "Duly marked enlarged photographs of identical prints will be supplied in due course."

136.

Exhibit PW 192/95 is nothing but the enlarged photographs of chance print Q3 and specimen print S3. The date on this document is 21-08-2002. This date is not the date of examination but the date of supply of the enlarged photographs. The CRL.A. Nos.357/08, 486/08, 396/08, 338/08, 751/09 & 752/09

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examination and comparison of the fingerprints had been done on or before 08-08-2002 and it is only the enlarged photographs of the identical prints which were subsequently supplied on 21-08-2002 as mentioned in the note in exhibit PW 192/97 itself. Thus, the argument of the learned counsel for Pradeep Sharma is not tenable. There is no escape from the fact that the fingerprints of Pradeep Sharma were found not only on the polythene cover of the box of sweets but also on one of the teacups.

137.

We now need to consider the timings of Pradeep Sharmas visit to Shivani

Bhatnagars apartment on 23-01-1999. In the visitors register Ex.PW61/1 the entry Ex.PX132/23 shows the time of entry of Rajiv Bhatnagar (whom the appellant was personating as) to be 2.50 pm. And, the time of exiting from the complex has been shown as 15:10. As per the handwriting expert, the figures 15:10 are not in the handwriting of Pradeep Sharma. No one has owned up to having written the said figures. So, not much reliance can be placed on the time 15:10 as representing the actual time when Pradeep Sharma (under the false identity of Rajiv Bhatnagar) left the apartment complex.

138.

The next entry in the register is of 3:45pm of one Wasaluddin. He would have

been a key witness, but, unfortunately, for reasons which we cannot decipher the prosecution has not arrayed him as a witness. In between, we have the testimony of PW66 Rakesh Bhatnagar who stated that he had received a call from Shivani that someone had come from the side of his friend Mr Adhikari from Tribune, Chandigarh to invite him on the marriage of his son. In fact, PW66 stated that Shivani had told him that someone from Chandigarh had come to invite him. According to PW66 he queried Shivani as to who is this Adhikari? Thereupon, according to PW66, Shivani asked him to speak to the person present in the flat. That person then came on the line and gave his name, which he could not recall, but he was positive that his surname was given as Sharma. The voice was of a young male and he invited PW66 Rakesh

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Bhatnagar for the marriage and he (PW66) told him okay. The said call was received by PW66 at about 3 pm on 23-01-1999. He also stated that the voice of Pradeep Sharma was the same as the one he had heard on the telephone on 23-01-1999 when Shivani had asked him (the person in the flat) to talk to him (PW66 Rakesh Bhatnagar). When he was cross-examined by the learned counsel for R.K. Sharma, PW66 Rakesh Bhatnagar denied that he had made a false statement before court that the time of the call was 3 pm. He clarified that by 3 pm he meant that it could be 3 pm or 3.15 pm. However, at the same time PW66 also stated that it is correctly stated in the FIR that he had received a phone call from Shivani at about 3.30 pm on 23-01-1999. Whether the phone call was at 3 pm or 3.15 pm or 3.30 pm does not in any way help the appellant Pradeep Sharma as there is nothing sacrosanct about the entry 15:10 in the register. First of all, we dont know who wrote 15:10 and, secondly, assuming that it was Pradeep Sharma himself, can we expect him to be truthful about the exit time when he was not truthful about his name and address?

139.

We also have the postmortem examination report Ex.PW3/1A which gives the

time since death as 21 hours. The autopsy was concluded on 24-01-1999 at 12:30 pm. Consequently, the time of death would be about 3:30 pm on 23-01-1999. These timings can never be exact and are at best approximations. But, we find that it coincides, more or less, with the visit of Pradeep Sharma to Shivani's flat and his conversation with PW66 Rakesh Bhatnagar.

140.

Thus, it is clear that the evidence on record points in the direction of Pradeep Sharma as being the killer of Shivani Bhatnagar.

Links with others 141. Pradeep Sharma is alleged to be Satya Prakash's nephew (sister's son). Satya

Prakash is alleged to be a tenant in a premises in Gurgaon allegedly belonging to Shri

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Bhagwan Sharma who is the son of Onkar Sharma who, in turn, is known to RK Sharma as he was in the police and had worked under RK Sharma. It is also alleged that Satya Prakash knew RK Sharma independently also as RK Sharma had, in 1996, inaugurated a portion of a school (and there is a plaque to this effect) at village Utlodha of which Satya Prakash was the Sarpanch.

142.

It is alleged that on the date of the murder, Pradeep Sharma was in touch with

Shri Bhagwan Sharma. The prosecution case is that on 23-01-1999 at 11:55 am a phone call of duration 55 seconds was made from mobile phone number 9811008825 to landline number 5018092 installed at House No. 201, Roshan Garden, Garden, Najafgarh, Delhi. The number 9811008825 is alleged to have been used by Shri Bhagwan Sharma and telephone number 5018092 is said to be

installed at Pradeep Sharmas house. From the section 313 Cr PC statement of Pradeep Sharma it is clear that he resides at house no.200, Roshan Garden, Najafgarh, Delhi.

143.

It is further alleged that a call was made on 23-01-1999 at 13:17 hours (1.17 pm) for 9 seconds from 9811008825 to Shivani Bhatnagars landline number 2726729.

144.

At 13:35 hours a call was made from 5018092 to 9811008825 for 120 seconds and at 15:48 hours a call was made from a PCO number 6259071 to 9811008825.

145.

According to the prosecution, Shri Bhagwan Sharma made the call at 11:15 to Pradeep Sharma with regard to their plan to kill Shivani Bhatnagar. Then, a call of 9 seconds was made by Shri Bhagwan to Shivani's house just to ascertain that she was home. This was reported to Pradeep Sharma when the latter gave him a call at 13:35 hours. It is thereafter that Pradeep Sharma left his home for Shivani's apartment to complete the job. After the murder of Shivani Bhatnagar, at 15:48 hours Pradeep

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Sharma rang up from 6259071 (the number of a PCO) to inform Shri Bhagwan Sharma on his mobile phone number 9811008825 that the job had been done.

146.

These four calls are reflected in the call details Ex. PW135/28 which is in

respect of phone number 9811008825. As per the counsel for the appellants, there are several difficulties. First of all, according to them, Ex.PW135/28 is inadmissible as it does not comply with section 65B of the Indian Evidence Act, 1872. Secondly, Ex.PW135/28 is intrinsically unreliable. Thirdly, there is no evidence that Shri

Bhagwan was the owner/user of phone number 9811008825. It is also urged that the prosecution has not established that landline number 5018092 was Pradeep Sharmas landline number.

147.

PW135 Major AR Satish (retd) stated that in the year 1999, two mobile

companies namely Essar and Airtel were operating in Delhi. He further stated that he had worked with Essar as Executive (Administration) from 01-08-2001 to 27-09-2002. He also stated that Essar Company is now known as Hutchison. He further testified that in order to operate any mobile phone instrument, a SIM card has to be inserted and every SIM card has an individual SIM number. Every mobile phone instrument also has a unique distinct number which is called the IMEI number. He stated that whenever a call is made or received the computer automatically records the date, calling number, called number, time, duration of the call, cell ID and the IMEI number of the instrument. He stated that the printout of mobile telephone number 9811008825 was got taken out by him which was running in six pages and is for the period 03-01-1999 to 23-01-1999 and all the pages of the printout are collectively marked as exhibit PW 135/28. He also stated that all the pages of exhibit PW 135/28 bear his signatures at point A as well as the seal of the company and that it is a correct printout.

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148.

In the course of his cross examination, PW 135 admitted that the format in

respect of the printout of exhibit PW 135/1 to 8 is different from the format of the printout of exhibit PW 135/28. He also admitted that from the printout exhibit PW 135/28 it cannot be said as to when the printout was taken. He also admitted that exhibit PW 135/28 does not contain the IMEI number nor does it bear the call data record nor does it carry the file number, time or date of taking out the printout from the call data record and the computer system on which the printouts are taken. He also revealed that the method of recording the month, date and year of the call in the format as mentioned in column number two of exhibit PW 135/28 can be changed manually but, unless it is so changed, the sequence of recording the date, month and year in exhibit PW 135/28 would remain the same. He also stated that usually, the manual change in the format of recording of month, date and year is not made and it is only done when somebody asks for the call details to be made in a particular format. Most importantly, PW 135 stated that the date format cannot be changed in between while taking out a printout from month, date and year to the other format of date, month and year. He also stated that temporary call details remain temporary for a few days may be two days or so from the calling period.

149.

Let us now analyse Ex.PW135/28 in detail as this document is of great

significance. Ex.PW135/28 was sent by the Nodal Officer, Hutchison Essar Telecom Limited to Mr M.K. Sharma, ACP, Delhi Police, Crime Branch, Adarsh Nagar, Delhi alongwith a covering letter (Ex.PW135/27) dated 27-09-2002. As per the said

covering letter, the call details (Ex.PW135/28) of mobile number 9811008825 were for the month of January 1999. The beginning portion of Ex.PW135/28 is as under:-

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150.

It is apparent that the call details pertain to phone number 9811008825. It is

also clear that the details given are calling number, date, time, called number, duration, incoming/outgoing and cell ID. Interestingly, the heading is This is a temporary call detail statement. The IMEI numbers, however, are not indicated. It is also relevant to note the date format indicated at the head of the table MM/DD/YY. This implies that the dates would be two digits for the month, two digits for the day and two digits for the year, in that sequence. An example of the MM/DD/YY format would be 03/10/97, which would translate to March 10th, 1997. The first entry in Ex.PW135/28 is of the date 3/1/99. First of all, this is not in the format of MM/DD/YY. Because if it were, then the date would have read as

03/01/99 as two digits each have been prescribed for the month, day and the year. Secondly, even if we ignore the fact that the month and day have not been printed in two digits each, even the sequence is wrong. The MM/DD/YY format requires that the month be indicated first, followed by the day and year. The entry 3/1/99 would then mean March 1, 1999 but, that is not what the covering letter (Ex.PW135/27) says. As per the contents of the said letter, the call details are for the month of January 1999. The obvious conclusion is that 3/1/99 refers to 3rd January, 1999. Implying thereby that, the entry 3/1/99 is not in the format (MM/DD/YY) indicated at the head of the column for dates. What is even more noteworthy is the fact that from 3rd January 1999 till 12th

151.

January 1999 (inclusive) the manner of representing the date continued as day-

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month-year. But, right in the middle of the call details statement from 13th January, 1999 onwards the date format switches to MM/DD/YY or the month day year sequence. This can be easily discerned from the relevant portion of Ex.PW135/28 extracted below:-

152.

The entries for 12th January, 1999 are shown as 12/1/99 but, for 13th January, 1999 the date format has inexplicably switched to MM/DD/YY (01/13/99). This is not supposed to happen in a continuous computer printout as indicated by PW135 himself. 153. Another aspect to be kept in mind is as to why did the date format switch on We must remember that for this case, 13-01-1999 is a and from 13-01-1999?

significant date. It is on this date that the alleged meeting between RK Sharma, Shri Bhagwan and Satya Prakash took place in Ashoka Hotel and when Shivani Bhatnagar was allegedly pointed out by RK Sharma. It is also alleged that on this date RK Sharma also pointed out her flat at Navkunj Apartments.

154.

Ex.PW135/28 has another unexplained problem. At several places in the said statement of call details the times of calls have not followed the logical sequence. To illustrate this point, we have extracted the alleged call details of 23-01-1999:-  
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155.

It is obvious that the times have been shown in the hh:mm:ss format. In this So, as the day

format the time begins at 00:00:00 and ends at 23:59:59.

progresses, the hours increase from 00 to 01, 02 and so on till 23. The computers of the cellphone company also record the calls in this sequence. This is admitted by PW135 in his cross-examination when he stated Time of call made or received is also recorded in sequence automatically. Of course, the call details can be

obtained from the database in ascending or descending order. But, there cannot be a break or a switch in the sequence.

156.

In the above extract, we find that the time of the second call is 13:16:34

followed by 13:17:19, 13:17:44 and so on till 19:48:58 and then there are two calls at 0:00:00 followed by a new ascending sequence from 11:55:33 onwards till 16:40:47. Computers follow a sequence. Calls are recorded sequentially. When

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PW135 was asked to explain this break in sequence, he replied It is correct that the recording of the time is not in sequence as it ought to be.

157.

When we examine the above extracted portion of Ex.PW135/28 we find that in

the time column there are several entries of 0:00:00. Such entries appear at several places in Ex.PW135/28. When, in the course of cross-examination, PW135 was asked to explain this he replied that 00-00-00 means system has not been able to pick up the time data correctly.

158.

Another anomaly in Ex.PW135/28 would be apparent by observing the

following extract from it:-

159.

Points X10 and X11 are two calls of the same time (14:28:41) and for the same duration (40 secs.). The calling (9811008825) and called (9811008838) numbers are the same in both the entries except that in X10 the calling number is prefixed

by the country code of India 91 whereas the called number is not so prefixed and this is reversed in X11 where the calling number is not prefixed by 91 but the called number is. Moreover, while X10 has been shown as an outgoing call, X11 is depicted as an incoming call. When asked to explain this, PW135 replied I can not explain as to how one call is incoming from the same phone and one is outgoing at the same time from the same number.

160.

Finally, we find that at point X15 of the following extract from Ex.PW135/28 there is a misalignment of data.

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A proper explanation could not be given by PW135 as he simply said It does not appear to be proper time picked up by the computer. PW135, however, denied the suggestion that he had, under pressure from the police, signed the call details as contained in Ex.PW135/28 which was brought by them. He admitted that 27-09-2002 was his last working day in the office.

161.

Mr Pawan Sharma, appearing for the State, sought to explain the entry at point

X15 by submitting that the called number was 115435858 and the remaining digits [ie., 981 18963 5] upto 60 were part of some mobile number. Viewed in this way (by ignoring the digits 091 18963 5), the said entry would read as under:919811008825 12/1/99 15:41:59 115435858 60 O: 11282

162.

This explanation does not coalesce very well with printouts said to be

generated by the computer system. If we accept that the digits 981 18963 5 are part of a mobile phone number, then, the question arises as to why would there be three numbers in the same row when only two numbers (the calling phone number

and the called phone number) are to appear? Three numbers can only appear if data of another row is snipped and added on to the the row in question. This cannot happen with computer generated data unless there is a malfunction. It is not a malfunction because the cell ID is correctly placed. If there were a displacement of data it would continue throughout the rest of the call details. This is not so. Of course, it is quite possible for an individual using a word processor to cut and paste data and, in doing so, mistakenly splice the data of two rows. 163. In State v. Navjot Sandhu: (2005) 11 SCC 600 the supreme court, with

reference to call records, observed as under:-

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"150. According to section 63, secondary evidence means and includes, among other things, "copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies". Section 65 enables secondary evidence of the contents of a document to be adduced if the original is of such a nature as not to be easily movable. It is not in dispute that the information contained in the call records is stored on huge servers which cannot be easily moved and produced in the court. That is what the High Court has also observed at para 276. Hence, printouts taken from the computers/servers by

mechanical process and certified by a responsible official of the serviceproviding company can be led in evidence through a witness who can identify the signatures of the certifying officer or otherwise speak of the facts based on his personal knowledge. Irrespective of the compliance with the requirements of section 65-B, which is a provision dealing with the admissibility of electronic records, there is no bar to adducing secondary evidence under the other provisions of the evidence act, namely, sections 63 and 65. It may be that the certificate containing the details in subsection (4) of section 65-B is not filed in the instant case, but that does not mean that the secondary evidence cannot be given even if the law permits such evidence to be given in the circumstances mentioned in the relevant provisions,

namely, sections 63 and 65." (Emphasis supplied) 164. As in the case before the Supreme Court, in the present case also there is no

certificate containing the details spelt out in sub-section (4) of section 65-B of the Indian Evidence Act, 1872. However, as observed by the Supreme Court, there is no bar on the prosecution (or for that matter, the defence) in adducing secondary evidence in the form of exhibit PW 135/28 read with the testimony of PW 135. It is for this reason that, despite there being no certificate in terms of sub-section (4) of

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section 65-B of the Indian evidence act, 1872, we have examined exhibit PW135/28 in the light of the testimony of PW135 and the submissions made by the counsel for the parties. Considering the totality of these circumstances we are of the view that exhibit PW135/28 is an unreliable document. We are of the view that exhibit PW135/28 is not a direct computer printout of the data available in the computers/servers of the telephone company. The impression we get is that the data as appearing in exhibit PW 135/28 has been tampered with. Certain details have been blanked out and others have been introduced. The date sequence and the time sequence has been altered as discussed above. These are clear indicia of tampering/manipulation. On the basis of available evidence we cannot determine as to which part of exhibit PW 135/28 is authentic and which part isn't. We are also not clear as to whether the tampering was done at the instance of RK Sharma, who was a powerful police officer, or at the instance of someone else. The fact remains that the call records exhibit PW 135/28 pertaining to the mobile phone number 9811008825 are unreliable.

165.

At the same time we must keep in mind that every call made or received is

recorded in the databanks of the cell phone company. This means that every call record in respect of a particular phone number has a mirror image in the databank of the other called/calling number. So, while the call records exhibit PW 135/28 of

the mobile phone number 9811008825 may not be reliable, particular entries can still be cross checked with the call record of the called/calling number. With this in mind, let us go back to the alleged exchange of calls between Pradeep Sharma and Shri Bhagwan Sharma on 23-01-1999.

166.

The first call was allegedly made at 11:55. It was a call which allegedly originated from 9811008825 and the called number was 5018092. Unfortunately there are no call records of 5018092 for 23-01-1999. PW176 Suresh Kumar Kathuria, PS to GM Janakpuri, MTNL, Delhi stated that in the year 2002, in August, he was

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posted as PS to GM (Wext) having office at Mayapuri. Police had contacted him in respect of phone no. 5018092. He proved, inter alia, the following call details in respect of phone number 5018092: Ex.PW176/8 Ex.PW176/9 Ex.PW176/10 STD call details for the period 01-05-99 to 15-07-99; STD call details for October 1999: nil report; Statement that STD/ISD details for June 1998, August 1998 & October 1998 are not available in the CD. STD call details for the period 16-09-98 to 15-11-98; STD call details for the period 16-03-99 to 30-04-99;

Ex.PW176/11 Ex.PW176/12

There is no mention, even in these records, of mobile phone no. 9811008825. Thus, even if we search for the mirror entry in the call records of 5018092, we find that it is not there. The conclusion is that the prosecution has not been able to establish that, on 23-01-1999, a call was made from 9811008825 to 5018092 at 11:55 hours. By the same logic, even the call allegedly made from 5018092 to 9811008825 at 13:35 hours is not proved.

167.

This is apart from the question that according to Pradeep Sharmas counsel, the phone number 5018092 does not even belong to him but stands in the name of one Ram Phal Sharma of village Dichaon Kalan. The said Ram Phal Sharma has not been produced by the prosecution. Anyhow, from the testimony of PW176 it is clear that the original O.B. Ex.PW176/3 stands in the name of Ram Phal Sharma and not Pradeep Sharma. The registration demand note Ex. PW176/5 is also in favour of Ram Phal Sharma. The duplicate application Ex.PW176/6 also shows the applicants name as Ram Phal Sharma and the address where the telephone is to be installed as near Pole no.117, vill. & P.O. Dichaon Kalan, New Delhi. PW176 also stated in

examination-in-chief that all the documents Ex.PW176/1 to 176/12 and photocopy Ex.PW176/13 were seized from him vide memo Ex.PW156/1.

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168.

On being cross-examined by the learned counsel for Pradeep Sharma, PW176 stated that as per his record the said phone 5018092 is in the name of Ram Phal Sharma of village Dichaon Kalan. Importantly, with regard to Ex.PW176/13, he stated that it is not in his hand, it was not recorded in his presence and that he did not even have the original of Ex.PW176/13. Moreover, he admitted that he put his signature and seal on Ex. PW176/13 at the instance of the police. Ex.PW176/13 is as under:-

169.

It is purportedly signed by some supervisor, record section, Najafgarh. But, he has not been produced. Nor has PW176 or anybody else testified that he recognizes the signature. In fact, even PW176 clearly stated that he did not even have the original. So, his signature and seal on the said paper does not in any way

authenticate

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it. Even though it is marked as an exhibit, the same cannot be said to have been proved in the manner required in law. Thus, even the alleged connection between Pradeep Sharma and phone number 5018092 has not been established by the prosecution.

170.

We now move on to the alleged call made on 23-01-1999 at 13:17 hours from 9811008825 to 2726729 (Shivani Bhatnagars landline). We have already held that the call records Ex.PW135/28 of phone no. 9811008825 are unreliable. Consequently, the factum of this call can only be verified from the call records of 2726729. But, the prosecution has not produced them! So, this alleged call also remains in the realm of an allegation and does not transcend the threshold of proof.

171.

An alleged call was made from 6259071 (a PCO at South Extension) by Pradeep Sharma to phone number 9811008825. PW104 Mohd. Arif stated that he working in the PCO Booth in South Extension Part II, New Delhi opposite to Mehrasons Jewellers and that the owner of the said booth is one Tariq Wali. He stated that, inter alia, phone bearing 6259071 was installed in the said booth. He stated that on 03-08-2002 Inspector Inder Singh of Crime Branch had come there. No member of the public was with him nor was accused Pradeep Sharma with him. As PW104 was allegedly resiling from his statement made to the police earlier, the learned Special PP cross-examined him. He denied the suggestion that he had made any statement to the police that on 03-08-2002 accused Pradeep Sharma had come to the said booth and had pointed out the same to the effect that he and his associate made a phone call from this booth on 23-01-1999. He,

however, proved Ex.PW104/2 (phone bill of 6259071) which was seized vide Ex.PW104/3. There no call records of phone no. 6259071 to enable us to verify as to whether a call was made to 9811008825 on 23-01-1999. Thus, there is no evidence of Pradeep Sharma having made a call on 23-01-1999 from

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the phone number 6259071 installed at the said PCO booth to the mobile phone No. 9811008825.

172.

From the above discussion, it is clear that the prosecution has failed to establish the linkages between Pradeep Sharma and the other accused through the said four alleged phone calls of 23-01-1999. In fact, there is no evidence of any phone calls between Pradeep Sharma and the other appellants. We have already held Ex.PW135/28 to be unreliable. Even as per the prosecution case, Pradeep Sharma was not part of the conspiracy in the early stages, when, it was allegedly hatched in December 1998. He was also not party to the alleged meeting at Ashoka Hotel on 1301-1999. It is only thereafter, as alleged by the prosecution, that Satya Prakash, as a part of the agreed conspiracy, contacted his nephew Pradeep Sharma and required him to liquidate Shivani Bhatnagar and to meet him at Sunder Nagar Market on 19-01-1999. It is alleged that on that date, Pradeep Sharma met Satya Prakash, as arranged, and the other co-accused Shri Bhagwan was also present and Satya Prakash, once again, persuaded Pradeep Sharma to take up the task and allegedly assured him that he would be reinstated in HUDA, where he had worked and that the case pending against him in Chandigarh would be finished in case he did the job. It is also alleged that Pradeep Sharma demanded a sum of Rs. 3 lacs in addition to the above mentioned favours and this was conveyed to Shri Bhagwan, who paid a sum of ` 50,000/- to Pradeep Sharma as advance. These allegations have not been substantiated by any evidence. They are merely made on the basis of disclosure statements allegedly made by

the accused which, without leading to any discovery of any fact, would not be admissible in evidence. There is no evidence that Satya Prakash had engaged the services of Pradeep Sharma. There is no evidence that a meeting between Pradeep Sharma and Satya Prakash and Shri Bhagwan actually took place on 19-01-1999. There is no evidence that a sum of ` 50,000/- was paid by Shri Bhagwan to Pradeep Sharma or that the latter had agreed to to the job for a sum of ` 3 lacs and other

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favours. The only link is the relationship between Satya Prakash and Pradeep Sharma but that alone is insufficient for linking Satya Prakash and the rest (other than Pradeep Sharma) with the crime.

173.

Once the link between Pradeep Sharma and the other appellants, insofar as the crime is concerned, is snapped, there is serious doubt about the involvement of the others. Although the motive behind Pradeep Sharma killing Shivani Bhatnagar is unclear and has not been established, we have already found, on the basis of other overwhelming scientific and circumstantial evidence, that Pradeep Sharma was the person who killed Shivani Bhatnagar. Did he act alone? Did he act at the behest of RK Sharma and the other appellants or did he act at the instance of someone else? These are questions which we cannot answer on the basis of the material before us. The quality of evidence before us is not of a high caliber. The key document Ex.PW135/28 is riddled with so many problems that it cannot be relied upon. Judges, like other human beings, also have suspicions but, judges, unlike others who are free to arrive at their own conclusions, cannot and do not convict on the basis of mere suspicion. The prosecution has to prove its case beyond reasonable doubt. We are afraid that the prosecution, in our view, has failed to do so insofar as appellants RK Sharma, Shri Bhagwan Sharma and Satya Prakash are concerned. The prosecution, however, succeeded in proving its case

insofar as Pradeep Sharma is concerned. Consequently, Pradeep Sharmas conviction under section 302 IPC stands confirmed and so does the sentence awarded to him. The other three appellants, namely, RK Sharma, Shri Bhagwan Sharma and Satya Prakash get the benefit of doubt and they stand acquitted of all charges. The impugned judgment and order on sentence, insofar as it concerns them, are set aside. They RK Sharma, Shri Bhagwan Sharma and Satya Prakash are directed to be released forthwith, if not required in any other case. Insofar as Pradeep Sharma is concerned, while the charge under Section 120B IPC is

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not proved, his conviction under Section 302 IPC and sentence thereon stands confirmed. He shall serve out the rest of his sentence.

174.

Consequently, Crl A. 357/2008, Crl A. 486/2008 and Crl A. 396/2008 are

allowed and Crl A. 338/2008 is dismissed as above. The State appeals Crl A. 751/2009 and Crl A.752/2009, are also dismissed.

BADAR DURREZ AHMED, J

MANMOHAN SINGH, J OCTOBER 12, 2011 SR/HJ

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