

Before S. J. Vazifdar, CJ & A.B. Chaudhari, J.

RAM KUMAR KALYAN—Appellant

versus

STATE OF HARYANA AND ANOTHER—Respondents

CRA-D No.922-DB of 2014 & CRA-AD No.12 of 2015

March 07, 2017

(A) *Indian Penal Code, 1860 — Ss.34, 302 and 307—Murder—Acquittal—Appeal against acquittal—Whether prosecution failed to prove charges against appellant—Held, doctor never examined —His report was not proved—Trial Judge could not rely upon doctor’s evidence or his report—All injuries were ante-mortem and sufficient to cause death in normal course—Nothing to suggest that shot fired before or after deceased died was even remotely considered—Fact that both shots would have led to death of deceased did not support prosecution’s case—Witness admitted that both wounds were contact wounds and therefore suicidal and not homicidal—Nothing to indicate that witnesses were giving false evidence—Nothing to suggest that they gave evidence to favour accused—Evidence of witness was insufficient to convict accused—Presumption that blood on accused’s clothes was that of deceased incorrect—Conviction of appellant could not be sustained—Appeal allowed.*

Held that, there is this sentence in the evidence of PW8 “All the injuries were ante-mortem in nature and sufficient to cause death in normal course of life”. It is true that the expression ‘ante-mortem’ is used. However, from his evidence read as a whole it is clear that PW8 was not deposing as to whether the second shot was fired before or after Sramveer died. His evidence indicates clearly that he did not even address himself to this issue. The only purport of the evidence was that both the injuries were sufficient to cause the death in a normal course of life. There is nothing in the evidence which suggests that the question as to whether a shot was fired before or after Sramveer died was even remotely considered.

(Para 46)

Further held that, at the cost of repetition, even the prosecution’s case and Renuka’s evidence is that it is Sramveer who fired the first shot. The evidence of PW8 and PW23 indicates that the

first shot may have been on the neck and not on the chest. According to these witnesses, the injury on the neck would have caused Sramveer's death but only after a few minutes. He also admitted in cross-examination that there was no damage as such to the brain. It is not improbable, therefore, that Sramveer was in a position to fire the second bullet on his chest, although he had sustained the injury on account of the bullet being fired on his neck. Thus, the fact that both the shots would have led to his death does not support the prosecution's case. It is of equal importance to note that PW23, whose evidence we will have occasion to refer to again, stated: "The possibility of the injury below the chin of Sramveer could be the result of the first shot cannot be ruled out". Read with the evidence of PW8 that the injury below the chin/on the neck would have enabled Sramveer to live for a few minutes indicates that Sramveer could have been in a position after the first injury on the neck to fire the second shot on his chest.

(Para 47)

Further held that, this evidence virtually destroys the prosecution's case of Ram Kumar Kalyan having fired the second shot. The witness admits that both the injuries were contact injuries. The cross-examiner rightly did not stop at merely putting the commentaries of the two authors to the witness. Upon his further cross-examination, the witness stated that it was correct that the abovementioned features are true of injury Nos.1 and 3 qua Sramveer. In effect, therefore, the witness admitted that both the wounds were contact wounds and therefore, suicidal and not homicidal.

(Para 49)

Further held that, the submission is totally unsustainable. Such a submission cannot be made across the Bar. The prosecution never raised this contention before the learned Judge. Nor was there any application for declaring these witnesses hostile. Further still, there was not even an application for reexamination to clarify any aspect. There is nothing to indicate that the witnesses were giving false evidence in this regard. One was the person who conducted the post-mortem (PW8) and the other a ballistic expert (PW23). We have been through their evidence more than once. One thing is certain. There is nothing to suggest that they gave evidence with a view to favouring the accused.

(Para 51)

Further held that, the learned Judge after referring to a part of the evidence of PW8 came to the conclusion that it cannot be said that there was no damage as such to the brain as suggested by PW8 and that therefore this goes to show that if Sramveer had himself caused the first injury on the neck he could not cause the second injury in the chest. The learned Judge has therefore disbelieved the PW8. The learned Judge referred to the post-mortem report (Ex.P-15) which showed that extra dural haematoma was present in both the frontal lobes and the left maxillary antrum was full of blood. He then observed that as per the Medical Jurisprudence the frontal lobe is part of brain, the function of which is judgment, reasoning, attention and short term memory, motor function, motor speech and personality. From this he concludes that it cannot be said that there was no damage to the brain as such as suggested by PW8.

(Para 56)

Further held that, considerable reliance was placed on behalf of Renuka-prosecution as well as by the learned Judge on the evidence of this witness. In our view this evidence is wholly insufficient to convict Ram Kumar Kalyan. It does not establish his guilt.

(Para 71)

Further held that, Ram Kumar Kalyan did not have to prove his innocence. He was entitled to be presumed innocent. It was for the prosecution to prove his guilt. The DNA sampling cannot possibly prove him guilty. The learned Judge also presumed that it was the Sramveer's blood on Ram Kumar Kalyan's pyjama. Without there being any evidence of the same, basing himself on this premise he faulted Ram Kumar Kalyan or not having explained how Sramveer's blood had come on his clothes. The presumption that the blood on Ram Kumar Kalyan's clothes was that of Sramveer, as we have already held is incorrect. There was no evidence to establish the same.

(Para 77)

Further held that, in the result, the evidence of the witnesses other than Renuka and her father Ranbir Singh does not support the case of the prosecution. Infact the evidence of some of the prosecution witnesses militates against the case of the prosecution. In material respects it establishes the defence. Indeed it establishes the defence to such an extent that Mr.Bajaj found himself contradicting his own witnesses and inviting the Court to disbelieve them in material respects.

On the basis of the evidence of these witnesses the prosecution can by no stretch of imagination be said to have proved Ram Kumar Kalyan's guilt beyond reasonable doubt. On the basis of the evidence of these witnesses we are infact inclined to hold that the prosecution has not established the case against Ram Kumar Kalyan even if we were to apply the civil law test of

balance of probabilities. On the basis of this evidence we are infact of the view that Ram Kumar Kalyan did not fire the shot.

(Para 99)

Further held that, having said that, however, considering the above judgments and the facts and circumstances which we have referred to we would not accept Mr. Narula's contention that Renuka and Ranbir Singh deliberately and consciously gave false evidence. In our view, the delay in filing the complaint and the events that transpired after the occurrence can be viewed in a different manner which indicates a possibility that Renuka's recollection of the occurrence was blurred or inaccurate on account of various factors. Firstly, it must be remembered that at that time Renuka was expecting a child which she tragically lost on account of the occurrence. The evidence of PW2 Dr. Balwan Singh, Medical Officer, Government Hospital, Karnal, indicates that she was semiconscious when she arrived at the hospital, although he stated that Renuka could have witnessed the subsequent events for a few minutes. In cross examination he admitted the possibility of Renuka being unconscious immediately on receiving the injury on the chest and due to mental stress of pregnancy and collection of 600 ML fluid in the plural cavity. He admitted that the possibility of Renuka being unconscious in these circumstances cannot be ruled out. The trauma of an incident as serious as this must had have its own effect on her. She lost her brother and her husband within minutes and suffered serious injuries herself. As any parent she must obviously have been anxious throughout about her daughter Ananya's future and her future as well. The pendency of FIR-182 and the possibility of her family being suspected must have had its own effect. We cannot rule out the possibility of these several serious facts having had their own effect upon Renuka's recollection of what transpired during the occurrence. It is possible, therefore, that Renuka did not make false statements but was instead a victim of all these circumstances which had an adverse effect on her recollection. It is also possible that this is how she must have put it to her father Ranbir Singh. Although we have

not accepted Renuka's and Ranbir Singh's evidence, we attribute the discrepancies between their evidence on the one hand and the rest of the evidence of the prosecution itself on the other on account of these unfortunate circumstances that Renuka was faced with and must continue to be facing.

(Para 130)

In CRA-AD No.12 of 2015

(B) *Indian Penal Code, 1860 — Ss.302—Appeal against conviction for murder—Whether prosecution failed to prove charges against appellant beyond all reasonable doubts—Held, report shows a bullet mark on wall—Hard to believe version of witness that accused fired at her—Case not established—Appeal dismissed.*

Held that, this brings us to Criminal Appeal-AD-12 of 2015 against the common order and judgment in so far as it acquits Ram Kumar Kalyan for the offence under section 307 of the IPC and Om Lata Kalyan of the charge under sections 302 and 307 read with section 34 of the IPC. What we have said so far in Criminal Appeal No.922-DB of 2014 against conviction also establishes that there is no case against Ram Kumar Kalyan for the attempt to murder of Renuka. We have also discussed the aspect regarding both the injuries on Renuka being on account of deflected bullets. We quoted paragraph-60 of the judgment in which the learned Judge rightly came to the conclusion that from the evidence of PW 23 Dr.R.K.Kaushal, who is a ballistic expert it is clear that there was a possibility that the bullet on Renuka's jaw was after being deflected from a hard surface such as a wall. The report Ex.P42 shows that there was a bullet hit mark on the wall. It is difficult then to accept Renuka's version of Ram Kumar Kalyan having fired at her.

(Para 148)

Further held that, it is also not necessary to consider whether in an appeal to the High Court or otherwise, it is open in a criminal case to plead the alternative defence of grave and sudden provocation. The grave and sudden provocation would presumably be on account of Ram Kumar Kalyan having witnessed his son being killed by Sramveer and therefore in a fit of range having picked up the pistol and shot Sramveer. It is not necessary to consider this aspect as we have held that the case against Ram Kumar Kalyan and Om Lata Kalyan under sections 302 and 307 of the Indian Penal Code has not been established.

(Para 154)

Sartej S.Narula, Advocate,

for the appellant in CRA-D-922-DB of 2014.

Manoj Bajaj, Advocate

and Ranbir Singh, Advocate,

for the appellants in CRA-AD-12-2015

and for respondent No.2 in CRA-D-922-DB of 2014.

J.S.Bedi, Senior Advocate

with Divya Sodhi, Advocate,

for respondents No.1 and 2 in CRA-AD-12 of 2015.

Kapil Aggwarwal, Additional Advocate General, Haryana

for the State of Haryana.

S.J. VAZIFDAR, CHIEF JUSTICE:

(1) Criminal Appeal-D-922-DB of 2014 is an appeal against the order of the learned Additional Sessions Judge, Karnal in Sessions Case No. 838 of 2013 holding the appellant Ram Kumar Kalyan guilty of the murder of one Sramveer and convicting him for the commission of offences punishable under section 302 of the Indian Penal Code, 1860 and sentencing him to undergo rigorous imprisonment for life and to pay a fine of ` 20,000/- and in default thereof to further undergo rigorous imprisonment for six months’.

Criminal Appeal-AD-12 of 2015 is an appeal by the complainant Renuka Kalyan widow of Nabheet Kalyan and the said Sramveer sister, against the same order of the learned Sessions Judge acquitting the appellant in CRA-D-922-DB of 2014 in respect of the offence punishable under section 307 IPC and acquitting Om Lata Kalyan, her mother-in-law of the offence under section 307, 302 read with section 34 of the IPC.

(2) It would be convenient to deal with both the appeals by a common order and judgment for they relate to the same incident and the same complaint.

(3) Ram Kumar Kalyan is the appellant in Criminal Appeal-D-922-DB of 2014 and the first respondent in Criminal Appeal-AD-12 of

2015. Renuka Kalyan is the second respondent in Criminal Appeal-D-922-DB of 2014 and the appellant in Criminal Appeal-AD-12 of 2015. Om Lata Kalyan is the second respondent in Criminal Appeal-AD-12 of 2015. We will for convenience refer to these parties by name.

(4) It would be convenient at the outset to deal with Mr. Bajaj's contention on behalf of the complainant that the presumption of innocence of the accused no longer exists in view of his having been convicted by the trial Court. He contended that an accused who is convicted must in appeal prove his innocence beyond reasonable doubt.

(5) The submission is entirely unfounded. An appeal against an order of conviction is not similar to an appeal to the High Court for instance under section 260A of the Income Tax Act or a second appeal under the Code of Civil Procedure. The issue is concluded by the judgment of the Supreme Court in *Padam Singh* versus *State of U.P.*¹, wherein it has been held:-

“2.....When the matter was placed before the third learned Judge viz. Justice Malviya, he, instead of appreciating the evidence as a court of appeal would do, merely stated the conclusion of the two learned Judges, who originally heard the appeal and differed from each other and then he agreed with the conclusion of Hon'ble Mr Justice Kundan Singh, solely relying upon the evidence of PW 4, Vimlesh, who was also attacked by Padam Singh and who sustained the two injuries which could be caused by a blunt weapon. Mr Justice Malviya, apart from the fact that he did not discuss the trustworthiness of the four eyewitnesses, even has not discussed the reasoning advanced by Hon'ble Justice Mathur in not placing reliance on the inimical evidence of PWs 1 to 4. A bare reading of the judgment of Justice Malviya would indicate that he has failed to discharge his duty and obligation as an appellate court, in appreciating the evidence and coming to its conclusion one way or the other. It is the duty of an appellate court to look into the evidence adduced in the case and arrive at an independent conclusion as to whether the said evidence can be relied upon or not and even if it can be relied upon, then whether the prosecution

¹ 2000(1) RCR (Crl.)138

can be said to have been proved beyond reasonable doubt on the said evidence. The credibility of a witness has to be adjudged by the appellate court in drawing inference from proved and admitted facts. It must be remembered that the appellate court, like the trial court, has to be satisfied affirmatively that the prosecution case is substantially true and the guilt of the accused has been proved beyond all reasonable doubt as the presumption of innocence with which the accused starts, continues right through until he is held guilty by the final court of appeal and that presumption is neither strengthened by an acquittal nor weakened by a conviction in the trial court. The judicial approach in dealing with the case where an accused is charged of murder under Section 302 has to be cautious, circumspect and careful and the High Court, therefore, has to consider the matter carefully and examine all relevant and material circumstances, before upholding the conviction.....”(emphasis supplied).

(6) Ram Kumar Kalyan is the husband of Om Lata Kalyan. Their son Nabheet Kalyan was married to Renuka Kalyan. Renuka Kalyan is the daughter of Ranbir Singh. Her brother was Sramveer Singh. Nabheet Kalyan and Sramveer Singh died in the same incident which is the subject matter of these appeals. In other words in the incident Ram Kumar Kalyan and Om Lata Kalyan lost their son Nabheet Kalyan and Ranbir Singh and his wife lost their son Sramveer Singh. Renuka Kalyan and Nabheet Kalyan had a daughter, Anannya, who at the time of incident was only about a year old.

(7) The incident took place on the night of 22.04.2008. As there are varying versions of the incident we will first refer to Renuka Kalyan’s version as stated in her complaint dated 09.05.2009 under sections 302, 307 read with section 34 of the IPC and under sections 25, 54, and 59 of the Indian Arms Act, 1959 filed in the Court of the learned Chief Judicial Magistrate, Karnal. It may be noticed at this stage that this complaint was filed more than a year after the incident which took place on 22.04.2009.

(8) In her complaint Renuka Kalyan stated as follows:-

At the time of marriage, the dowry was given to her husband Nabheet’s family as demanded. Since inception, her in- law’s i.e.

accused Om Lata Kalyan and Ram Kumar Kalyan harassed and ill-treated her with demands for dowry. The right to file a separate complaint in this regard was reserved. Nabheet, her husband, was short tempered and his behaviour towards her was abnormal. Her in-law's and her husband left her at the entrance of her parental home at 8.30 P.M. on 23.03.2008 where she was compelled to stay for more than a month. At 8.30 P.M. on 22.04.2008 Nabheet Kalyan came to her parental home and took away their minor daughter, Anannya, forcibly. She alongwith her brother Sramveer went to her matrimonial home as she could not bear the separation from her child. Om Lata Kalyan taunted and humiliated her and asked her to rub her nose seven times on the floor. Om Lata Kalyan was enraged and pro-claimed that she would not allow her to stay in the house and that she herself was occupying a good position in official circles whereas the complainant's father was a petty lawyer. Om Lata Kalyan claimed to have strong links with the Director General of Police, Haryana, one R.S.Dalal. Meanwhile, Nabheet Kalyan had also come there taunting and torturing Renuka Kalyan. At 11.40 P.M. Sramveer Singh again came to the house of the accused at Nabheet's request. By that time Ram Kumar Kalyan had also returned to the house from the Karnal club. Sramveer knocked on the door which was opened by Nabheet and went straight to Ram Kumar Kalyan's room where Om Lata Kalyan was also present. Sramveer requested her in-law's to keep her properly. In the meanwhile Nabheet started beating her and challenged Sramveer to save her from his clutches. Nabheet held her by her neck, dragged her in the lobby of the house and pressed her neck with force, at which she cried and tried to rescue herself. On hearing the same, Sramveer Singh came into the lobby and tried to save her from Nabheet's clutches. Nabheet was furious and abused Sramveer and declared that he would kill her and that Sramveer was at liberty to do whatever he liked. In the meanwhile, Ram Kumar Kalyan and Om Lata Kalyan also entered the room and supported Nabheet who had threatened to take her life. What happened thereafter is best described in the words of Renuka Kalyan's complaint which reads as under:-

“Apprehending danger to the life of the complainant at the hands of accused Nabheet Kalyan, Sramveer took out pistol from pocket of his pants and fired at Nabheet Kalyan to save complainant but the said shot hit the complainant in chest when she came forward to save her husband. Accused Nabheet Kalyan did not release the complainant. Thereafter

Sramveer again fired two shots hitting Nabheet, who on receipt of pistol shots fell down. Thereafter Sramveer fired a shot at himself in his chest. He fell down and his pistol also fell down. The same was picked up by the accused Ram Kumar Kalyan. Thereafter both the accused Ram Kumar Kalyan and Om Lata Kalyan shouted that they would not allow the complainant and her brother to go alive. Om Lata Kalyan accused proclaimed to her husband that “YEH DONO BEHAN BHAI DUSHMAN TO BACH GAI INKO MARO” and Ram Kumar accused also proclaimed “SALE HARAMZADEY TOO JINDA KAISE REH SAKTA HAI”. At the instigation of Om Lata Kalyan accused Ram Kumar Kalyan fired at Sharamvir hitting him on his neck under the chin from a very close range. He also fired a shot at the complainant hitting her on the leftside of forehead. On receipt of fire arm injury at the hands of accused Ram Kumar Kalyan, the complainant fell down. Sharamvir had died during fire arm injury caused by Ram Kumar Kalyan on the instigation of Om Lata accused. Complainant was also fired at by the accused Ram Kumar with the intention to kill her but fortunately the complainant survived on account of timely medical aid but lost her child in the womb later on due to the act of the accused.”

The complaint proceeds as follows:-

Due to the influence of the Director General of Police, Haryana, a false and manipulated case was registered by Ram Kumar Kalyan resulting in FIR No. 182 dated 23.04.2008 inter-alia under section 302 of the IPC. (We will refer to the FIR in detail later. Suffice it to note at this stage that this FIR was filed by Ram Kumar Kalyan on the very next day viz. 24.04.2008 at about 6.00 A.M. i.e. within six hours of the incident). Renuka Kalyan was taken to the Government Hospital, Karnal by the police from the scene of the incident from where she was referred to the Apollo Hospital, New Delhi where she was admitted till 07.05.2008. She was operated upon twice to take out the bullets from her body. One bullet was removed from her chest but the second could not be abstracted from her jaw. From 08.05.2008 to 22.05.2008 she was treated at Sewa Sadan. She then went to her parental home when she was informed by her father Ranbir Singh that Sramveer had taken a pistol from their house without anybody's knowledge after breaking

open the lock on the date of the occurrence.

What is stated in the complaint thereafter is obviously not on the basis of Renuka Kalyan's knowledge but on the basis of what she was informed by her father Ranbir Singh. This is what she stated: Ranbir Singh was pressurized by the police who were close to Ram Kumar Kalyan. As a result thereof she was compelled to give affidavits as demanded by Ram Kumar Kalyan and Om Lata Kalyan relinquishing her rights in her husband Nabheet's estate. She was threatened that if she failed to do so she and her family would be falsely involved in the case. A false Will of Nabheet Kalyan was forged after his death by Ram Kumar Kalyan and Om Lata Kalyan excluding her from any right to Nabheet's estate. The Will contains derogatory remarks about her and her parents. The affidavits were taken by Ram Kumar Kalyan and Om Lata Kalyan from her without showing her the forged Will. She was alone and under great shock and agony. In order to protect the honour of her parents, she surrendered herself and signed many documents and made many statements before many authorities but was, however, told that she could keep her daughter Anannya with herself.

Ram Kumar and Om Lata Kalyan contacted one R.S.Cheema, a Senior Advocate of this Court, at Chandigarh, who they knew. The Advocate had influence over her father as they were classmates in the law college and colleagues at the bar. The Advocate offered to bring about an amicable compromise between the parties. Several meetings were held at his residence in this regard. The Advocate drafted several compromise deeds on which he made corrections in his own hand. The drafts were never finalized.

Several representations were made to the police officials and to the "higher ups" but nothing came of it. She tried her best through counsel to get the Forensic Science Laboratory's (FSL) report and other documents under the Right to Information Act, 2005 for filing this complaint but was unable to obtain any information due to the influence of the accused in the police department. The complaint refers to several orders passed by the competent authorities. The same were attached to the complaint. The complaint states: "the present complaint could not be filed due to the non-availability of the FSL report. Photocopies of the complaint, postal receipt and Fax are attached herewith for the kind perusal of this Hon'ble Court".

(9) In the preliminary evidence, Renuka Kalyan examined sixteen witnesses. On 03.05.2010 Ram Kumar Kalyan and Om Lata

Kalyan were summoned by the trial Court under sections 302, 307 read with section 34 of the IPC. On 27.11.2010 the complaint was committed to the Court of Sessions. On 01.06.2011 the accused were charge-sheeted for the commission of offences punishable under the said provisions by the Court of Additional Sessions Judge, Karnal. The accused pleaded not guilty. Thereafter the prosecution examined 23 witnesses PW1 to PW23 and had exhibited 45 documents marked as Ex.P1 to Ex.P45. Recovery memos of the clothes of Sramveer and a recovery memo of a gun and several cartridges and one revolver and six live cartridges were marked as 'Mark-A' and 'Mark-B' respectively.

(10) The statements of the accused under section 313 of the Code of Criminal Procedure, 1973 were recorded. The defence examined three witnesses, DW1 to DW4. At the instance of the accused, ten documents marked as Ex.D1 to Ex.D10 and Ex.PX were exhibited. An application dated 16.05.2009 moved by Ranbir Singh for cancellation of the report and a statement of Renuka Kalyan dated 30.03.2009 were marked as 'Mark-D1' and 'Mark-D2', respectively.

(11) Of the prosecution witnesses, the evidence of PW1, PW3 to PW7, PW9, PW16 and PW18 to PW21 do not require a detailed discussion. We will, therefore, deal with the other witnesses after referring to these witnesses.

(12) PW1-Anil Mehta was the photographer at Nabheet and Renuka's wedding. The marriage is admitted.

PW3-Anil Bhandari is the photographer working with the newspaper Dainik Jagran. He took photographs of the DGP, Haryana, the said Dalal, at Nabheet Kalyan's cremation. The evidence was to establish that Ram Kumar Kalyan knew the DGP well. Ram Kumar Kalyan admits knowing him.

PW4 is Constable Siya Ram. He merely deposed that Renuka's complaint addressed to the Chief Minister was received in the office of the IGP and the same was entered in the Receipt Register and marked by the IGP to the SP, Karnal for necessary legal action and that a reply was received from the SP, Karnal, which was forwarded to the Crime Branch, which was investigating the matter. He admitted that he had no personal knowledge of the case.

PW5 is Inspector Ishwar Chand. He was present at the Government Hospital, Karnal, during the post-mortem of Sramveer.

Sramveer's clothes were handed over to him along with some of the case property. This witness, in turn, handed the same over to the SHO/Inspector Harbans Lal and the same was taken into police possession by a recovery memo. He also handled the case property on another occasion on the next day.

PW6 is Constable Randhir Singh. This witness handled part of the case property on 24.05.2008 which he deposited with the Director, FSL. This witness upon being recalled for further statement corrected certain dates that he had mentioned.

PW7 is Dr. Deepak Vats, a senior Medical Officer, Apollo Hospital, New Delhi, who produced the original record regarding Renuka's treatment. He identified the signatures of the doctors attached to the Apollo Hospital on the records such as the discharge summary. He admitted that he had nothing to do with the medical procedures.

PW9 Jagjit Singh, is the Ahlmad of the Court of JMIC, Karnal, who brought the summoned file of Criminal Complaint No.18 of 2011 titled as Renuka vs. Ram Kumar Kalyan and produced the same.

PW16 is Dinesh Kumar, a Head Constable. He tendered an affidavit in lieu of oral evidence which stated that on 10.07.2009 MMHC/EASI, Police Station, Karnal, gave him two parcels of case property regarding Sramveer and Nabheet in respect of FIR No.182 for depositing the same in the FSL and the same was deposited and the receipt acknowledging the same was handed over to the MMHC/EASI. He further stated that the case property remained intact and was not tampered with. He denied the suggestion in cross-examination that the case property was tampered with before it was deposited with the FSL. His evidence is relevant only to the extent that the case property was handed over to the FSL. The cross-examination of this witness does not establish that he tampered with the same.

PW18 is Constable Rajesh Kumar. This witness tendered an affidavit in lieu of examination-in-chief in which he stated that on 15.05.2008 he was handed over a part of the case property which he deposited with the FSL and handed over the receipt to the MHC. In cross-examination, he stated that he did not remember the name of the MHC/MMHC.

PW19 is Om Parkash, a Sorting Assistant, RMS, Karnal. He was shown three receipts vide which on 18.02. (year not mentioned) 6,7 and 10 letters were received by UPC. He stated that no record is maintained

in the post office regarding the same and the receipt is returned after affixing the stamp of the post office. In cross-examination, he stated that the post office does not check the contents of the envelopes sent through UPC. He denied the suggestion that the receipts had been created later to help the complainant. There is nothing to establish the same either.

PW20 is ESI Om Kumar. This witness tendered an affidavit in lieu of examination-in-chief in which he stated that on 16.04.2009 he handed over the case property and a parcel containing DNA of Ram Kumar Kalyan for testing and delivering the same to the FSL. On 10.07.2009, he handed over the case property consisting of two parcels relating to Sramveer and Nabheet for taking the same to the FSL. He further stated that till that time the case property remained in his possession and that he had not tampered with the same. In cross-examination, he denied the suggestion that the case property was not deposited as per details stated in his affidavit. He denied that the case property was interfered with as and when required by the police. There is nothing to indicate that he did so.

PW21 is Inspector Harinder Kumar, Gurgaon who stated that on 16.04.2009 PW20-Om Kumar handed over the case property to him and that he deposited the same with the FSL. He further stated that he had not tampered with the same.

(13) It would be convenient at this stage to refer to Renuka's examination-in-chief in so far as it deals with the incident. We will refer to the rest of her evidence later. In her examination-in-chief she stated that she was married to Nabheet Kalyan on 03.03.2006 and referred to the claims for dowry and of her having been ill-treated and harassed by her in-law's as well as her husband Nabheet Kalyan. Her examination-in-chief as regards the incident that occurred on 22.04.2008 reads as follows:-

“On 23.03.2008 at about 8.30 PM my husband Nabheet Kalyan and my father in law Ram Kumar left me outside the main gate of my house and since then I am residing with my parents being left by my husband against my wishes.

On 22.04.2008 at about 8.30 PM my husband Nabheet Kalyan came to my parental house and forcibly took away my daughter Anannya. After that I alongwith my deceased brother Sarmveer Singh went to my matrimonial home in

Sector 14 Karnal to take back my daughter as I could not bear the separation of my daughter. When we reached there my husband Nabheet deceased and my mother in law were in the house. I requested them to return my daughter and my mother in law asked me to touch her feet and begged for my daughter and accordingly I touched her feet with my nose but she refused to accede my request. After that my mother in law again stated that my father is a just an ordinary Advocate whereas they are having their clout in the Government and Administration and having family relations with R.S.Dalal, DGP. During this deceased Nabheet also supported his mother and asked me to leave the house alongwith my brother. On this my brother felt a lot and asked me to leave the house but he left the house alone. Again at about 11.40 PM my brother Sarmveer returned back to my in laws house on the calling of my husband on his mobile phone. After entering in my in laws house my brother directly entered in the master bed room of the house where my father in law Ram Kumar was present and my brother requested my father in law to keep me with dignity. I over heard this conversation while outside of the door of the bed room. After this my husband Nabheet Singh dragged me towards the lobby and started strangulating me on which I raised hue and cry and on hearing my brother Saramveer came out of the room and requested my husband to leave me but Nabheet claimed that he will kill me whatever my brother can do he should do. During this my parents in law also came out in the lobby and supported their son. During this when I came in front of my husband my brother Saramveer fired from his pistol which hit me on my chest. After this Saramveer fired on my husband in order to save me which hit my husband on the left side of his chest as a result he fell down (again said) on the right side of the chest and the second fire caused by my brother on the neck of my husband. After that Saramveer fired on himself which hit him on the chest and due to which Saramveer fell down and the pistol also fell down from his hands. On seeing this both my parents in law exhorted that let both of us, myself, and my brother should not be allowed to go alive. Accused Om Lata again exhorted that let both of us be finished as why we

enemies were alive. After this accused Ram Kumar also exhorted as to why my brother is alive he will finish the entire family. After that accused Ram Kumar lifted the pistol of my brother and fired on the chin side of my brother and also fired on me which hit on the left side of my forehead due to which I fell down.”

She referred to her having been brought initially to the Government Hospital, Karnal and having then been admitted to the Apollo Hospital and the surgeries performed on her. She referred to her having unfortunately aborted her child due to the said incident. She mentioned about her return to her parents house where she came to know that her brother Sramveer had broken the lock of her father’s almirah and taken away a pistol without his knowledge and consent. It is important to note here the following deposition:-

“I also disclosed all the details of the incident as detailed above to my father. I also requested my father to take action against the accused persons. On which my father told to me that a talk of compromise is already going on through R.S.Cheema who is known to both the parties and acting as a mediator. But later on we came to know that R.S.Cheema has hob knobbed with my in laws.

On 28.5.2008 Mr. Cheema came to my father’s residence and met me and told me that I am just like his daughter and he will settle matter amicably and I should sign wherever he will ask me to do and he will see that the complete justice be done with me. I also came to know that an FIR is already lodged against me my brother and my father for killing my husband. I also came to know that the accused persons have also forged and fabricated a Will of my husband through Mr. Cheema in order to disinherit me and my daughter from the estate of my deceased husband. On 26.5.2008 and 27.5.2008 Mr. Ram Kishan maternal uncle of my father in law asked me to sign two affidavits brought by him in order to settle the dispute. I signed those affidavits without going through its contents.

On 18.02.2009, I came to know that on the basis of the forged Will of my husband, the accused persons had got transferred the property of deceased husband in the name of

Om Lata, my mother in law. On this I moved complaints with the higher authorities and Ex.P21 is one of the complaints lodged by me and thereafter on 9.5.2009 I filed the complaint Ex.P22 in the court of learned Area Magistrate, when no action was taken by the authorities on my complaints Ex.P21. My in laws were having close relations with Mr. R.S.Dalal, DGP of Haryana Police and we are having photographs in this regard. I have brought the album and in one of the photographs Ms. Vasundhra daughter of DGP Dalal is there as she had attended my marriage.”

(14) Her examination-in-chief ends here. We will refer to the cross examination later. It is important at this stage to note that the learned Judge, after considering the cross examination and the evidence of the other witnesses as well, substantially disbelieved Renuka’s evidence. Infact he passed strictures against her and her father Ranbir Singh for their attitude. The judgment read as a whole indicates that the learned Judge convicted Ram Kumar Kalyan essentially on the basis of the evidence of the other witnesses and not on the basis of the evidence of Renuka. A major part of the judgment infact deals with the evidence of the other witnesses. This is clear from the following observations of the learned Judge:-

“58. As discussed above, the incident in this case took place on 22.4.2008 and present complaint, Ex.P22, was filed in the court by the complainant Renuka on 9.5.2009. Prior to this, she has filed a complaint Ex.P21, to Chief Minister, Haryana on 18.2.2009, on the basis of which investigation of the case was transferred to Crime Branch. It has been argued by learned defence counsel that this delay in filing complaint after 382 days of the occurrence is fatal to the case of prosecution and the complaint has been filed on false and fabricated grounds only to grab the property of deceased Nabheet and that of accused Ram Kumar and Om Lata. The complainant has sworn an affidavit dated 26.5.2008, Ex.P17, in which she has clearly stated that Sharamveer has committed suicide. On the other hand, complainant has not denied these facts and has stated that delay in filing complaint and execution of affidavit dated 26.5.2008, 27.5.2008 and statement dated 7.6.2008 was on account of

compromise talks which were going on between the parties and when ultimately compromise failed and she found that she has been cheated by accused, she filed the present complaint. In the considered opinion of this Court, the act and conduct of complainant and her father PW10, Ranbir Singh, who himself is a lawyer is condemnable. For the sake of property, they entered into a conspiracy to screen the real offender. If they had got property as per settlement or otherwise, the crime would have gone unnoticed. There are various improvements in testimonies of PW10 and PW11 and they even tried to malign the image of senior police functionaries and of a senior member of legal fraternity but they have failed to prove conspiracy between them. Though PW10 and PW11 have tried to conceal genesis of crime but their evidence is not liable to be rejected on this ground alone as it is the duty of the Court to punish the guilty. There is ample scientific evidence to support prosecution version, that on 22.4.2008 accused Ram Kumar has committed the murder of Sharamveer by firing a shot on his neck. Therefore, judgments relied upon by accused though are source of guidance, but are not applicable to the facts and circumstances of the present case.

59. Thus, from the above discussed evidence, it is proved on record that on 22.4.2008, Sharamveer after firing shots at Nabheet and his sister fired a shot at himself in his chest and fell down. Thereafter, Ram Kumar after picking pistol of Sharamveer fired at him at neck. As per post mortem report, both the injuries were ante mortem in nature and were sufficient to cause death in normal course of life.

60. Now, as far as fire arm injury on the jaw of Renuka is concerned, she in her cross examination stated that Ram Kumar had fired on her from a very close range which was within inches. However, PW2 Dr. Balwan Singh in his cross examination admitted that there was no blackening or tatotting on the person of Renuka. PW23 Dr. R.K.kaushal who is a ballistic expert in his cross examination has stated that possibility of bullet on the mandible of Renuka after deflection from hard surface, such as wall etc. cannot be ruled out. The stand of accused Ram Kumar is also that

Sharamveer had fired at him but bullet hit wall and on deflection hit Renuka. Report Ex.P42 also shows that there was a bullet hit mark on the wall. It seems that Renuka has not given a true version as far as injury on her jaw is concerned. However, her version regarding causing of fire arm shot by Ram Kumar in neck on Sharamveer stands proved as discussed above from scientific evidence led on record. Simply because she has given a wrong version as far as injury on her jaw is concerned, she cannot be termed as a truthful witness in all aspects as law is well settled that doctrine of *Falsus in Uno falsus in Omni* bus has no application in India. Thus, turning back to the case in hand, it is held that prosecution has failed to prove that Ram Kumar had fired shot which hit in jaw of Renuka.”

(15) The learned Judge, therefore, looked upon the complainant and her father as being interested only in the property and to such an extent as to shield the murders of their brother/son for the same. We will state our own view on this very important aspect later.

(16) Before dealing with the evidence oral and documentary, we must refer to the defence. The first reference must be to FIR No.182 dated 23.04.2008 under sections 302, 307 and 120-B of the Indian Penal Code and 25,54 and 59 of the Arms Act registered at Police Station C.L. Karnal. Before going further with the defence and the evidence, we must refer to what happened immediately after the incident. The incident was reported almost immediately by Ram Kumar Kalyan which resulted in the PCR vehicle having taken Sramveer, Nabheet and Renuka Kalyan to the Government Hospital, Karnal. Renuka Kalyan was, in fact, examined in less than half an hour of the incident. This is evident from the Medico-Legal Report dated 23.04.2008 (Ex.P9), filled in by the doctor, which notes the day and hour of arrival as 12.10 A.M. on 23.04.2008. It notes that she was accompanied by the Police PCR.

(17) The said FIR No.182-23.04.2008 (Ex.P45) was registered at 8.05 A.M. on 23.04.2008 i.e. about 8 hours after the incident. The statement was recorded at about 6.00 A.M. On 17.12.2016, during the course of the hearing, the counsel furnished a fresh translation of the FIR by consent, as they both stated that the translation annexed to the appeal paper book was not satisfactory. In the FIR, it is stated as follows:

Renuka was insisting upon settling either in America Gurgaon or Delhi. To avoid dispute's, the accused shifted Nabheet and Renuka to a separate house in Karnal taken on rent and the entire "dowry articles" as well as daily needs had been given after purchase. Renuka's parents did not like the house and stated that they were humiliated on account of the accused arranging for a separate house on rent in the same city and, therefore, took Renuka with them to their house. The accused requested them not to do so as their business was in Karnal which was run separately by Nabheet and it would take him some time to settle the business. Nabheet, their son, wanted to live with the family. Despite repeated requests, Renuka's family maintained their demand and branded the accused as being greedy and threatened them. It would be convenient to quote the FIR itself recording Ram Kumar Kalyan's version of the incident. It reads as under:-

"On 22.04.2008 at about 11.00 p.m. my daughter-in- law Renuka and her brother Sramveer son of Ranbir Singh, Baldi came to my house in their Maruti car and Sramveer left his sister Renuka at my residence and went away. At that time I was out of my house At about 11.15 P.M. when I reached home and started playing with my granddaughter then Ranbir Singh, Advocate, Baldi called me on my phone number 94163- 00008 from mobile No.94160-00485 and asked me if everything is fine at home. After some time, door was knocked and someone asked to open the door. I asked who is it and upon this Sramveer replied that I am Sramveer. I called out for opening the door. As the door was opened, Sramveer entered the house and in anger said "Jijaji come here. Today we shall settle the scores." As soon my son Nabheet came before him, Sramveer started firing shots from his pistol at Nabheet, which hit my son Nabheet in the neck and under the ear. After suffering gunshot my son fell on the floor and thereafter fired bullets at my granddaughter Ananya, aged one year, which did not hit her. Then Sramveer fired bullets at his sister and after suffering gunshot Renuka fell on floor and as I tried to come out of the rook then Sramveer fired bullets at me. However, I narrowly escaped. I bolted from inside. My wife Omlata informed that after finishing the family, he has shot himself. It appears that Sramveer would finish our family was within

the knowledge of the family of Sramveer that he had gone for killing us. I gave information to the police. My son and Sramveer died on the way to the hospital and my daughter-in-law Renuka was referred to Apollo Hospital, Delhi. I have heard the recorded statement and it is correct. Sd/- Ram Kumar attested Harbans Lal, SHO, P.S. Civil Lines, Karnal dated 23.04.2008.”

(18) The police proceedings are also recorded in the same FIR. It is stated therein that Inspector/SHO along with ASI- Ishwar Chand, ASI-Jagat Singh and Constable-Randheer Singh were on patrol duty on the date of the occurrence when they received information that firing had taken place and three persons who were injured had been taken to the Government Hospital, Karnal. The SHO along with other officials went to the Government hospital, Karnal, where he came to know that Renuka had been referred to the Apollo Hospital, and that Sramveer and Nabheet had died and were in the mortuary in Karnal. He thereafter reached the place of occurrence where Ram Kumar Kalyan and other family members were in a state of shock and were not in a position to make a statement. He sent a message to the FSL team and dog squad. Ram Kumar Kalyan’s statement was recorded and had been read over and signed by him as correct. The same was sent to the police station for registration of a case through Constable Randheer Singh. Proceedings up to this stage were recorded by the Inspector/SHO Harbans Lal on 23.04.2008 at 7.30 P.M. He stated that he was investigating the case at the spot.

(19) On 29.04.2008, Ram Kumar Kalyan addressed an application to the SHO for correcting the FIR. During the course of the hearing on 16.12.2016, the counsel stated that the translation annexed to the proceedings was not satisfactory and, by consent, furnished another translation.

In this application, Ram Kumar Kalyan stated that the police had recorded in his statement that Sramveer also fired on his sister Renuka as a result of which Renuka fell down. Ram Kumar Kalyan further stated that he did not state this before the police. The application states *inter alia* as follows:-

“The applicant did not state this before the police. However, the shots struck against Renuka inadvertently when Saranvir fired at the applicant and Ananya. The applicant also stated that Saranvir in response to pre-planned scheme, attacked on

the applicant and his family members to eliminate entire family. In that plan, his parents Shakuntla and Ranbir Singh were also involved and the plan was prepared at the behest of Renuka. They had an eye on our property, therefore, according to that plan, daughter-in-law Renuka was left at home by Saranvir in the night at about 11:00 PM. At that time, applicant was not present in the house. Whenever they enquired that the applicant has arrived at the house, they immediately came again and attacked. However, the fact regarding fire at Renuka has been recorded by the police in my statement inadvertently. I had told the police regarding killing of me and my family but the same was missing. In this regard I have told orally 3-4 times but no action has been taken. So, I am giving the truth in writing so that any wrong statement may not be recorded.

It is, therefore, prayed that all the above mentioned facts may be kept in mind at the time of investigation. My complaint may kindly be got registered.”

(20) Thus far we have the rival versions of the incident leading to the death of Nabheet and Sramveer. There is no dispute about the fact that Sramveer, the complainant’s brother and Ranbir Singh’s son had murdered the son of the accused- Ram Kumar Kalyan and Om Lata Kalyan. Nor is there any dispute that Sramveer after killing Nabheet shot himself. The evidence establishes that both the shots on Sramveer were fatal. It also establishes that the injury on the chest would have led to his death within a minute and the injury in the neck would have enabled him to live a few minutes thereafter.

(21) The case of the prosecution, however, is that although either of the shots would have led to the death of Sramveer, Sramveer shot himself in the chest and fell down and that Ram Kumar Kalyan fired the second shot at Sramveer with the same weapon within that period of approximately one minute and, therefore, caused his death before he would have died anyway. The case of the accused is that Sramveer first shot himself in the neck and fell down and then shot himself in the chest. The first issue, therefore, is as to where he shot himself first in the chest as alleged by Renuka and the State or in the neck as contended by the accused. The second issue is whether the second shot was fired by Sramveer, as alleged by the accused, or by Ram Kumar Kalyan, as alleged by Renuka and the State.

(22) We must note at this stage that Mr. Bajaj on taking instructions from Renuka's father, who was present throughout the hearing of these cases, fairly stated that but for the immediate medical attention received by Renuka she would not have lived. He also fairly stated that it was only due to Ram Kumar Kalyan having immediately informed the police authorities of the incident that this was possible. We must pause here also to mention that it has never been anybody's case that either Ram Kumar Kalyan or Om Lata Kalyan or Nabheet ever intended attacking much less killing Sramveer. Their entire case is that it is only in view of Sramveer having killed their son Nabheet that Ram Kumar Kalyan shot Sramveer. On the other hand, Ram Kumar Kalyan's case almost from the beginning has been that Sramveer and the members of his family conspired in the pre-planned killing of their son Nabheet. Their further grievance is that the case against them has never been properly investigated. This is an aspect which we will deal with in CRM-M-26269 of 2015 by which the Magistrate ordered the further investigation of FIR No.182.

(23) As we mentioned earlier, the learned Judge has, to a large extent, disbelieved Renuka's evidence as an eye-witness, but has essentially accepted her account of the incident on the basis of the corroborative evidence of the other witnesses. A consideration of the evidence of the other witnesses is, therefore, of vital importance. We will now deal with the same.

PW2 – Dr.Balwan Singh, Medical Officer, Government Hospital, Karnal

(24) It is PW-2 who had filled in the Medico-Legal Report (Ex.P9), which we referred to earlier. PW2 had examined Renuka within half an hour of the incident. He stated that she was semi conscious. He described the nature of the wounds. One of the injuries (referred to by the witness as the second injury as is evident from the cross-examination) was a lacerated wound on the left side of the forehead just above and lateral to the eyebrow. The other injury (referred to as the first injury as is evident from the notes of the cross-examination) was a lacerated wound on the left side of the chest wall just below the mid clavicle. Injury No.1 was declared to be dangerous to life.

He then deposed that on 19.03.2010 (wrongly stated as 20.03.2010) i.e. two years after the incident, the police had moved an

application (Ex.P10) (which was objected to) on which he had given an opinion to the effect that the possibility of the injured to have been in her senses for a few minutes after one gunshot i.e. the chest injury cannot be ruled out and the injured may have witnessed the subsequent incident for a few minutes. The subsequent incident, according to the prosecution/Renuka, was the firing which ultimately killed Nabheet and Sramveer. He produced his opinion dated 20.03.2010 at Ex.P.10/A (objected to) and identified his signatures thereon.

(25) The accused cannot be held guilty on the basis of this evidence. Firstly, curiously, this opinion was sought on 19.03.2010 i.e. almost two years after the incident. Secondly, PW2 does not state that Renuka would have been in her senses after sustaining the injury to her chest enabling her to witness what happened thereafter. He merely stated that the possibility of her remaining in her senses for a few minutes cannot be ruled out and that the possibility that Renuka may “have witnessed the subsequent incident for a few minutes” also cannot be ruled out.

In cross-examination, he stated that it was found from the records of the Apollo Hospital that Renuka was pregnant for about 10-12 weeks and that during pregnancy women generally come under stress. He further admitted the possibility of Renuka being unconscious immediately on receiving injury No.2 in the chest and due to the mental stress of pregnancy and collection of 600 ml fluid in the plural cavity. He admitted that the possibility of her being unconscious due to these circumstances cannot be ruled out.

(26) Mr. Narula, the learned counsel appearing on behalf of the accused, stated that by the application dated 19.03.2010 the police sought the opinion of PW2 as to whether after the receipt of one gunshot injury Renuka could have witnessed the subsequent incident and as to how long she could have been in her senses after receiving the injury. Mr. Narula stated that it is curious that the doctor gave his opinion the next day by considering the injury to the chest and not the injury on the forehead although the application did not specify the injuries in respect of which the opinion was sought.

We will presume this to be of no consequence, as the doctor may have sought a clarification in this regard from the police before expressing his opinion. Further, no clarification was sought in cross-examination from the doctor in this respect. The doctor’s evidence, therefore, cannot be stated to be false. It is, however, inconclusive and

cannot possibly support the prosecution case that Renuka was conscious after receiving the first injury.

(27) On the basis of this evidence, therefore, it cannot be concluded with any degree of certainty that Renuka was conscious after the first injury and was able to witness what happened thereafter. To put the case of the defence at its lowest, the evidence of PW2 indicates both possibilities equally strongly.

(28) We will deal with the evidence of PW10 and PW11, Ranbir Singh and Renuka, after dealing with the evidence of the other witnesses.

PW8 Dr. Rakesh Mittal, Deputy Civil Surgeon, Karnal & PW-23 Dr. R.K.Koshal, Assistant Director, Ballistics, FSL, Haryana

(29) The evidence of PW8 and PW23 must be considered together. We will first refer to the evidence of PW8.

(30) This witness conducted the post-mortem examination of sramveer along with other doctors. He deposed that the right eye was partially opened, the left eye was closed and swollen, the mouth was partially opened, rigor mortis was present on all four limbs, post-mortem strains were present. On the dependant parts and there was bleeding from both the nostrils and from the mouth and clotted blood was present over the face and the neck and the upper part of the chest.

(31) Sramveer suffered two bullets. This witness referred to two injuries caused by one bullet which was fired, even according to Renuka, by Sramveer on his chest. The two injuries described by this witness refer to the entry and the exit points of this bullet. Paragraphs 1 and 2 refer to the injury at the entry point and the injury at the exit points, respectively, and read as under:-

“1. There was lacerated wound measuring 0.8 x

0.7 cm on the left side of the chest, 1 cm lateral to the mid line on left side, 3.5 cm above the xiphisternum 10.5 cm from the left nipple. It was oval shape with inverted margins and blackening surroundings the wound in an area of 2.5 x 2.5 cm. There was corresponding hole in the T shirt.

2. There was another lacerated wound measuring

1.5 x 1.0 cm was present, 1.5 cm below and 1.00 cm left to the inferior angle of left scapula,

13.5 cm lateral to the middle line. It was oval shaped with everted margin obliquely placed. A metallic body was visible with naked eye at the mouth of the wound.”

The inverted margin is a reference to the skin which goes inward on account of the entry of the bullet and the everted margin refers to the skin going outward with the exit of the bullet.

(32) Far from supporting the case of the prosecution, the evidence of PW8 strongly militates against it in several crucial aspects. Firstly at the exit point, which is the second injury referred to in paragraph-2 above, the metallic body of the bullet was visible with the naked eye at the mouth of the wound. The bullet was, therefore, embedded in the body at the exit point. It is, therefore, admitted that at the place of the second injury caused by the bullet fired on the chest the bullet had not exited the body but was embedded in it.

(33) This evidence has not been controverted. Indeed, this is the evidence of the prosecution witness PW8. This would indicate that Sramveer was on the floor when he received these bullet injuries otherwise the bullet would have exited his body and not have been embedded in it. In his cross- examination, all that the witness stated was: “I can not say the bullet could not come out in case where the person fired upon is lying on a hard surface”. This is a guarded statement. The least that must be said in favour of the defence is that the witness does not state that even if the person fired upon is lying on a hard surface, the bullet would come out. He did not state how if a person is lying on a hard surface the bullet would come out nevertheless.

(34) That the bullet on the chest was fired while Sramveer was on the floor is also supported by the evidence of PW23. The report of PW23 on the visit to the scene of crime (Ex.P42) states that a hole was present on the back left side of Sramveer and that a jacketed bullet was lying horizontally placed and lodged in the wound and the same was visible from the outside. A jacketed bullet is one whose shape has changed.

This indicates that the bullet must have been fired when Sramveer was lying on the floor. The evidence of PW8 and PW23 indicates that the bullet was, therefore, embedded in his body in all probability, on account of the body being on the floor thereby preventing the bullet from travelling further. There is no other explanation for the bullet on

the chest not having exited his body.

(35) The prosecution and Renuka's case is that Sramveer fired the first bullet and that it was on his chest. The accused contend that Sramveer first fired the pistol on his neck upon which he fell to the ground and thereafter fired the pistol this time on the chest. Four facts are admitted viz. (i) Sramveer fired the first shot on himself, (ii) when he did so he was standing; (iii) upon the first shot he fell on the ground and (iv) he suffered two bullets. If we are right in our conclusion that the shot on the chest was when Sramveer was on the ground it follows that the first shot which admittedly was fired by Sramveer was on his neck. There is indeed a possibility at least, if not an inherent probability, that Sramveer fired at his chest after he fell on the ground on account of the first bullet which he fired at his neck.

(36) The second important aspect of the evidence of PW8 is that the injury on Sramveer's chest would have caused his death in less than a minute. PW8 in his examination-in-chief described injury No.1 which is the injury caused at the entry point of the bullet on the chest. He referred to the track of the bullet, the path it travelled. PW8 in his examination-in- chief, stated:-

“On probing of injury no.1 the track was going through fifth intercostal space, down ward, back ward and outwards. The left plural cavity was full of blood and the lung was lacerated. The right ventricle and left ventricle of the heart were lacerated. Sixth rib was fractured on its posterior side. Pericardial cavity was full of blood. Stomach contained semi digest food particles, small intestine contains chime and gasses, large intestine fecal matter and gasses, liver, spleen, kidneys were pale and healthy. The urinary bladder was empty. Trachea and larynx and right lung were healthy. The abdominal wall, peritoneum, mouth, pharynx and esophagus were also healthy.” *(underlining by us)*

In his cross-examination, PW8 stated:-

“It is correct that in case of injury no.1 being on the left side of the chest and the heart is lacerated, the person can not survive even for a minute but in case of injury no.3 a person can survive for few minutes.”

Injury No.3 is the bullet fired on the neck.

(37) Injury No.1 was caused by the entry of the bullet on the chest. In his examination-in-chief, set out earlier, the witness had stated that the right ventricle and the left ventricle of the heart were lacerated. The lung was also lacerated. Thus, this witness himself states that on account of the injury on the chest Sramveer could not have survived even for a minute. In his examination-in-chief, PW8 had stated: “All the injuries were ante-mortem in nature and sufficient to cause death in a normal course of life”. However, while stating that both the bullets would have resulted in Sramveer’s death, he stated that the bullet on the chest would have enabled him to live for less than a minute, whereas, the bullet in the neck would have enabled him to survive for a few minutes. The case of the accused is, therefore, probable and consistent with the evidence that upon receiving the first injury in the neck Sramveer would have lived for a few minutes enabling him to fire the second shot on his chest after falling on the ground.

(38) The learned Judge accepted the prosecution case that Sramveer first shot himself on the chest and not on the neck as alleged by the accused. In this regard he observed on the basis of the photographs that the blood was going horizontally downward towards Sramveer’s head. He observed that if Sramveer had shot himself on the neck, the blood would have flowed vertically downward because when he shot himself he was standing.

(39) This does not take into account the possibility of the blood not oozing out from the neck injury immediately but after Sramveer had collapsed.

(40) Mr. Bajaj invited us to infer that Ram Kumar Kalyan did lie down next to Sramveer and then shoot him in the neck in view of the blood having been found on his pyjama.

(41) Such an inference cannot possibly be drawn. The blood could have come on to his pyjama even otherwise after the shooting was over. It is reasonable to presume that Ram Kumar Kalyan would have been around the area where the blood had splattered after the shooting at which time the blood could have come on his pyjama. As Mr.Narula further pointed out there was no evidence of Renuka to this effect. To accept Mr.Bajaj’s submission would be pure speculation.

(42) The learned Judge having wrongly come to the conclusion that Sramveer first shot himself in the chest proceeded to hold that on account of the chest injury he could not have fired himself again in the

neck. This conclusion was on the basis of a report of one Dr.P.D.Dogra, who after consulting his associate Doctors and other experts is alleged to have opined that after laceration of heart on account of the chest injury it was not possible for Sramveer to fire again at himself and in case Sramveer had fired below his chin himself, then it was unlikely for him to fire again at himself. The Doctor was never examined and his report was not proved. The learned Judge could not, therefore, have relied upon the Doctor's evidence or his report. It is only an opinion taken by the police while investigating FIR No. 182. The report was not even tendered in evidence.

(43) There is another aspect of the evidence of PW8. Even assuming that the prosecution case and Renuka's evidence that the first shot was fired on the chest is correct, it would mean that the second shot, which was allegedly on the neck was fired in less than a minute after Sramveer fired the first shot on his chest and had collapsed. Renuka's evidence, which we will refer to later, does not indicate such a quick response on the part of Ram Kumar Kalyan. We are unable to understand how it could be presumed that Ram Kumar Kalyan fired the second shot within less than one minute of the first shot.

We referred earlier to Renuka's version in the complaint and in her examination-in-chief. She stated that it was only after Sramveer fell to the ground upon shooting himself that both the accused shouted that they would not allow Renuka and her brother Sramveer to go alive. She further stated that Om Lata proclaimed to her husband that "YEH DONO BEHAN BHAJI DUSHMAN TO BACH GAI INKO MARO" and Ram Kumar accused also proclaimed "SALE HARAMZADAY TOO JINDA KAISE REH SAKTA HAI, AB TO MAIN TERE POORE PARIVAR KO KHATAM KAR KEY DAM LOONGA". She further stated that it was at the instigation of Om Lata that Ram Kumar Kalyan fired at Sramveer hitting him on his neck under the chin from a very close range.

It is difficult to imagine that all this happened in less than 60 seconds. There is no evidence whatsoever to establish that the reaction of Ram Kumar Kalyan was that rapid. It was for the prosecution to establish the same. Renuka was the only person who could have adduced such evidence. She did not do so.

(44) There is yet another aspect on this account. Even as per PW8, Sramveer would have died on account of his self- inflicted

wound on the chest within less than a minute. The prosecution does not deny the same. Mr. Bajaj, in fact, agreed that this was so. Unless it is established that Ram Kumar Kalyan picked up the weapon and fired the second shot in less than a minute, it must be presumed that he fired the shot after Sramveer had died. It is difficult in such a situation to convict a person on a presumption that Ram Kumar Kalyan picked up the weapon and fired the shot while Sramveer was still alive i.e. within less than 60 seconds of the first shot. Renuka's evidence, which we will deal with later, does not establish the same. Nor does the evidence of the other witnesses establish the same.

(45) Even assuming that Ram Kumar Kalyan had fired the second shot on his neck, Sramveer would, in any event, admittedly, have died in less than a minute on account of the first bullet wound which, according to Renuka's evidence he fired upon his chest. If Ram Kumar Kalyan did not fire the shot within a minute he may well have fired it upon a dead person. He could not in that event be convicted of murder.

(46) There is this sentence in the evidence of PW8 "*All the injuries were ante-mortem in nature and sufficient to cause death in normal course of life*". It is true that the expression 'ante-mortem' is used. However, from his evidence read as a whole it is clear that PW8 was not deposing as to whether the second shot was fired before or after Sramveer died. His evidence indicates clearly that he did not even address himself to this issue. The only purport of the evidence was that both the injuries were sufficient to cause the death in a normal course of life. There is nothing in the evidence which suggests that the question as to whether a shot was fired before or after Sramveer died was even remotely considered.

(47) At the cost of repetition, even the prosecution's case and Renuka's evidence is that it is Sramveer who fired the first shot. The evidence of PW8 and PW23 indicates that the first shot may have been on the neck and not on the chest. According to these witnesses, the injury on the neck would have caused Sramveer's death but only after a few minutes. He also admitted in cross-examination that there was no damage as such to the brain. It is not improbable, therefore, that Sramveer was in a position to fire the second bullet on his chest, although he had sustained the injury on account of the bullet being fired on his neck. Thus, the fact that both the shots would have led to his death does not support the prosecution's case.

It is of equal importance to note that PW23, whose evidence we will have occasion to refer to again, stated: "The possibility of the injury below the chin of Sramveer could be the result of the first shot cannot be ruled out". Read with the evidence of PW8 that the injury below the chin/on the neck would have enabled Sramveer to live for a few minutes indicates that Sramveer could have been in a position after the first injury on the neck to fire the second shot on his chest.

(48) This brings us to the third important aspect of the cross-examination of PW8. He stated that: ".....it is correct that both these injuries no.1 (chest) & 3 (neck) are possible by fire arm injuries from a near contact, as there was blackening in both the injuries and singeing of hairs in injury No.3 (neck)". Thus, in this sentence itself he admits that both the injuries No.1 and 3 i.e. the injury at the entry point of the bullet on the chest and the bullet injury on the neck were from "a near contact". This implies the weapon/pistol being held to the body. This, in turn, according to the witness, was evident from blackening in these two injuries and singeing of the hair in injury No.3. What follows in the cross-examination is of crucial importance. The witness further stated as follows:-

"It is correct that as per Modi's Medical Jurisprudence in Chapter No.25 Edition 23rd relating to medicolegal aspect of the post mortem matter at page 765, it is mentioned that "a suicidal fire arm wound is usually a contact wound situated on the side of the temple depending upon which hand was used to shoot himself, in the centre of the forehead, the roof of the mouth, in the chest or epigastrium in front of the left side and sometimes under the chin." It is correct that same theory has been mentioned in "a text book forensic medicine principle and practice by Prof. Krishan Vij." It is correct that usually in case of suicidal attempts by fire arms the direction of the firing is consistent with the self firing and the same has been mentioned in the text book of forensic medicine Prof. Krishan Vij. It is correct that above mentioned features are true for injuries no 1 & 3 qua Sharanvir."

(49) This evidence virtually destroys the prosecution's case of Ram Kumar Kalyan having fired the second shot. The witness admits that both the injuries were contact injuries. The cross-examiner rightly did not stop at merely putting the commentaries of the two authors to

the witness. Upon his further cross-examination, the witness stated that it was correct that the abovementioned features are true of injury Nos. 1 and 3 qua Sramveer. In effect, therefore, the witness admitted that both the wounds were contact wounds and therefore, suicidal and not homicidal.

(50) Mr. Bajaj understandably sought for the first time to disown and discredit the evidence of his own witnesses PW8 and PW23. Mr. Bajaj admitted that the evidence of PW8 and PW23, in this regard, virtually destroys the prosecution case. He, however, sought to distance himself from the evidence of these witnesses and stated that the court ought to discard their evidence.

(51) The submission is totally unsustainable. Such a submission cannot be made across the Bar. The prosecution never raised this contention before the learned Judge. Nor was there any application for declaring these witnesses hostile. Further still, there was not even an application for re-examination to clarify any aspect. There is nothing to indicate that the witnesses were giving false evidence in this regard. One was the person who conducted the post-mortem (PW8) and the other a ballistic expert (PW23). We have been through their evidence more than once. One thing is certain. There is nothing to suggest that they gave evidence with a view to favouring the accused.

(52) Mr. Kapil Aggarwal, the learned Additional Advocate General, appearing for the State, fairly and rightly did not agree with Mr. Bajaj about discrediting the witnesses. He did not disown their evidence. He did not contend that the evidence ought to be ignored.

(53) The learned Judge has not considered these important aspects of the evidence of PW8 to PW23. The learned Judge observed in paragraph-55 that “after receipt of injury in neck he could not cause second injury to himself in the chest”. There is, however, no reason given in support of this finding. The evidence of the witnesses was not considered by the learned Judge before coming to this finding. As we noted earlier, the witnesses themselves state that after receipt of the injury on the neck, Sramveer could have lived for a few minutes. The witnesses did not say that after the injuries in the neck it was not possible for Sramveer to have fired another shot on his chest. With the witnesses not having said so, we fail to see, how, such a conclusion can be drawn by the Court. A case to this effect was not even put by the prosecution to the witnesses. Especially in a criminal trial it is not permissible for the Court to speculate on such matters without the

benefit of evidence and against the accused who should be entitled to the benefit of doubt. On this aspect there is no evidence to the contrary either. This is the reason why Mr. Bajaj was driven to challenging the evidence of his own witnesses without ever having even made an application before the trial court for declaring them hostile or without leading further evidence.

(54) In paragraph-55, the learned Judge also observed that Sramveer had fired at himself on losing his mental equilibrium on account of Nabheet's having caused injuries to his sister Renuka and Sramveer could have caused himself multiple gun shot injuries in the neck and thereafter in the chest only if he was so firm to commit suicide in any manner which the facts and circumstances of the case do not suggest.

(55) We are with respect unable to agree with this line of reasoning. The reasoning is pure conjecture. Sramveer may not have gone to the place of occurrence with a view to commit suicide. The fact, however, remains that even Renuka and the prosecution have admitted that Sramveer tried to commit suicide by the first shot. The first shot whether it was on the chest or on the neck was according to PW8 fatal. PW8 stated that either of the shots would have led to his death- the one on the neck within a few minutes and one on the chest in less than a minute. Sramveer having fired the first shot was suicidal. There is no warrant for speculating that the second shot was not fired by him because he was not 'so firm to commit suicide in any manner'.

(56) The learned Judge after referring to a part of the evidence of PW8 came to the conclusion that it cannot be said that there was no damage as such to the brain as suggested by PW8 and that therefore this goes to show that if Sramveer had himself caused the first injury on the neck he could not cause the second injury in the chest. The learned Judge has therefore disbelieved the PW8. The learned Judge referred to the post-mortem report (Ex.P-15) which showed that extra dural haematoma was present in both the frontal lobes and the left maxillary antrum was full of blood. He then observed that as per the Medical Jurisprudence the frontal lobe is part of brain, the function of which is judgment, reasoning, attention and short term memory, motor function, motor speech and personality. From this he concludes that it cannot be said that there was no damage to the brain as such as suggested by PW8.

(57) PW8 is the Doctor. He is the prosecution witness. The prosecution does not disown him. There is nothing on record which is contrary to what PW8 stated. A case to this effect was not even put by the parties to PW8. At the cost of repetition he was neither declared hostile nor re-examined.

(58) The evidence of PW23 is also relevant as regards the issue of blood samples on the clothes of Ram Kumar Kalyan and the gun shot residues found on them. We will, however, deal with this aspect later. It requires a consideration of his report (Ex.P42-pg-531) and his statement (Ex.P43-pg-291).

(59) We have already referred to the evidence of Renuka Kalyan (PW11). We will deal with her evidence and with the evidence of PW10 Ranbir Singh after we refer to the evidence of the other witnesses. We also dealt with the evidence of PW23 insofar as it was relevant to the evidence of PW8. We will refer to the evidence of PW23 further in another context later.

(60) With this we come to the evidence of prosecution witnesses-12 to 15.

PW 12 Rajesh Soni, Assistant Director, Physics, FSL Madhuban

(61) PW12 stated that on 27.04.2009 i.e. a little over a year after the incident, he received a telephonic message from DIG, CID Crime directing him to visit the scene in connection with FIR No. 182. He alongwith other police officers went to Ranbir Singh's house where this witness says that Rajinder Singh stated that on the night of 22.04.2008 Sramveer took the pistol from the wooden almirah (cupboard) in Ranbir Singh's bed room. Rajinder Singh asked PW12 to examine the almirah (cupboard) and give his opinion. He accordingly examined the almirah, took photographs and submitted his report dated 29.04.2009 (Ex.P33) alongwith the photographs. In cross examination he admitted that when he inspected the almirah the lock was not affixed to the almirah and was lying separately as shown to him by the police. The empty gun box was lying on the bed. He admitted that there were no tool marks or scratches or ridges on the lock. He admitted that where the lock of an almirah is broken with force, there is a possibility of some marks, grazes/scratches appearing on the lock of the almirah; that there were, however, no scratches or grazes on the lock shown to him and that there were no traces of any scratches or force marks on both the latches fixed inside the almirah. He stated that he was not in a position to pinpoint

the time of breaking open of the almirah.

(62) It is curious that the evidence of this witness was led by the prosecution. It was not relevant to the allegations against Ram Kumar Kalyan. It is no body's case that Ram Kumar Kalyan took the weapon from Ranbir Singh's almirah. It is admitted that it is Sramveer who brought the weapon to the site.

Ranbir Singh stated in his evidence that he never moved an application to the SHO for the inspection of his almirah; that he had not moved any application to the Inspector Harbans Lal when he visited his house on 07.06.2008 for inspection of the almirah; that he had not made any written application for inspection of the almirah even till the filing of this case or thereafter. We are not inclined to believe that on an aspect as important as this he made an oral request to the police to examine his almirah.

(63) The purpose of leading the evidence of PW12 was to try and show that Ranbir Singh and his wife were unaware of their son having broken the almirah and taken the weapon with him. He did so in view of the allegations of Ram Kumar Kalyan almost from the beginning that the family of Ranbir Singh had conspired to murder his son Nabheet.

(64) The evidence of PW12 infact raises more questions than it answers. Why was the almirah examined almost a year after the incident; why was the almirah kept in a broken state for over a year; why were there no scratch marks on the lock if indeed Sramveer had broken the lock of the almirah without the knowledge of his parents; why had the almirah not been repaired for over a year; why had Ranbir Singh requested the police authorities to visit the site in regard to the almirah after over a year. The witness further stated that he could not tell the time of breaking open the almirah.

PW 13 Naresh Kumar, Chief Section Supervisor, BSNL, Chandigarh

(65) This witness was examined to establish that the landline No. 2777279 was installed in the name of the Director General of Police, Haryana at the relevant time and Landline No.2726363 was installed in the name and at the residence of Advocate Rajinder Singh Cheema. In cross examination he had no personal knowledge as far as the actual working of these numbers was concerned.

PW 14 HC Amarjeet Singh, MHHC, P.S.Civil Lines,

Karnal PW 15 Inspector Raj Kumar

PW 17 SI Ram Sarup, SHO, Police Station Gharaunda, Karnal

(66) This witness stated that he had brought the case property and deposited the same with the then Moharir Head Constable (MHC) on 24.04.2008 with entry No. 891 dated 24.04.2008 by Harbans Lal, Inspector/SHO Karnal in an intact condition. In cross examination he admitted that one of the parcels marked as parcel No.6 was transferred to the Crime Branch on 16.04.2009. The witness was recalled for further statement. He tendered his affidavit (Ex.PW14/A) in his further evidence. He stated that on 16.04.2009 Parcel No.6 was handed over to SI Harinder Singh.

(67) Mr.Narula relied upon the affidavit in so far as there was no mention of his having been handed over/taken delivery of Ram Kumar Kalyan's clothes (paragraph-2). However, subsequently in paragraph-4 of the affidavit it is stated that on 25.04.2008 the case property was handed over to Constable Randhir Singh for depositing the same with the F.S.L. In paragraph-4 the property so handed over refers to one parcel of clothes of Ram Kumar Kalyan duly sealed with seal 'IC'. There is no explanation as to how, when he had not been handed over Ram Kumar Kalyan's clothes as is evident from paragraph-2 of the affidavit, Ram Kumar Kalyan's clothes were subsequently handed over to him as stated in paragraph-4 of the affidavit. In his cross-examination the witness stated that he had no personal knowledge of depositing and movement of the case property and that the facts mentioned in his affidavit were as per the entries made in Register No.19. Thus there is an important gap in the evidence. There is nothing to indicate where Ram Kumar Kalyan's clothes were prior to the same having been handed over to this witness on 25.04.2009. The location of his clothes during the said period is still unknown.

This assumes significance as much was sought to be made on the basis of the blood samples and the gun shot residues on Ram Kumar Kalyan's clothes. The same was also relied upon substantially by the learned Judge in the impugned judgment. We will deal with the same later.

(68) The evidence of PW14 must be considered with the evidence of PW 17 SI Ram Sarup, SHO, Police Station Gharaunda near Karnal. PW 17 tendered his affidavit in lieu of his examination-in-chief (Ex.PW17/A). Mr.Narula again relied upon the evidence of this

witness. As we noted earlier PW14 Amarjit Singh in paragraph-2 of his affidavit (Ex.PW14/A) stated that on 23.04.2008 Inspector Harbans Lal handed over the case property in FIR No. 182. In paragraph-2 he specified the case property which did not include Ram Kumar Kalyan's clothes. Ram Sarup PW17 in his affidavit (Ex.PW17/A) stated that on 23.04.2008 Harbans Lal handed over the case property to him. He specifies the case property in paragraph-2 which does not include Ram Kumar Kalyan's clothes. In paragraph-4 he stated that on 25.04.2008 he handed over the case property to Constable Randhir Singh for depositing the same with F.S.L. He specifies the case property in paragraph-4 which now includes Ram Kumar Kalyan's clothes. Again there is no explanation from where Ram Kumar Kalyan's clothes suddenly appeared.

(69) It is necessary at this stage to consider the evidence of PW15. He stated that he was associated with the investigation of FIR-182. He referred to the case property found at the scene of occurrence. He identified the same in Court. This included Ram Kumar Kalyan's clothes. Mr.Narula stated that on account of the evidence of PW14 and PW17 it appears that the clothes were never sent to the police station wherever else they may have been sent. This is for the reason that PW14 and PW17 never received the clothes in the first instance for being handed over to the F.S.L. but on receipt of the case property from the F.S.L. subsequently the clothes were there. The break in the link regarding the location of Ram Kumar Kalyan's clothes is from the date of the occurrence i.e. 23.04.2008 till 25.04.2008 when they were handed over to PW14 and PW17. The colour of Ram Kumar Kalyan's clothes as mentioned by PW15 is grey whereas the evidence of PW22 mentions the colour as sky colour which presumably means the colour blue.

PW 22 Dr.Pandu Guguloth, Deputy Director, DNS, FSL, Madhuban, Karnal

(70) This witness stated that on 16.04.2009 he received certain parcels in connection with FIR No.182. The relevant part of his affidavit is as under:-

“The first parcel No.1 which was marked as parcel No.6 by Serological Department, FSL, Madhuban, was sealed with the seal of FSL-H Sero was found having intact seals and contained:-

- a) an orange coloured cotton T-shirt marked as item No.1 by me;
- b) a grey coloured cotton Pyjama marked as item No.2 by me;
- c) Another sealed parcel No.II having seal of FSL-H Sero with intact seals labelled as 08/F-1987; S-341/08, P5 Saranbir and contained
 - a) cotton brownish trouser stained with a few dark brown stains marked as item No.3 by me
 - b) A white cotton underwear marked as Item No.4 by me
 - c) A black cotton T-shirt stained with numerous dark brown stains marked as Item No.5 by me.

Result of examination:

DNA was extracted from item No.2 & 3 and were subjected to Y-STR analysis by using Y-Filer Kit. DNA profile was obtained from item No.2 and were compared with DNA profile obtained from item No.3.

The allelic pattern of item No.2 matches with allelic pattern of item No.3.

Conclusion:

The Y-STR analysis conclusively proves that source of item No.2 (Pyjamas) was matching with DNA profile of source of item No.3 (Trousers).”

(71) Considerable reliance was placed on behalf of Renuka - prosecution as well as by the learned Judge on the evidence of this witness. In our view this evidence is wholly insufficient to convict Ram Kumar Kalyan. It does not establish his guilt.

(72) Firstly it is of vital importance to note that the blood samples of Ram Kumar Kalyan, Sramveer, Nabheet Kalyan and Renuka Kalyan were not taken. The submissions on behalf of the prosecution were merely conjecture as were the conclusions drawn by the learned Judge. The witness extracted the DNA from item No.2 which were Ram Kumar Kalyan’s grey coloured cotton pyjamas and item No.3 which were Sramveer’s trousers. The allelic pattern of two items matched. There is nothing, however, that establishes whose blood

was on Ram Kumar Kalyan's pyjama and on Sramveer's trouser. Given the constraints of space, the proximity of the persons present at the incident and the injuries caused by the pistol, it cannot be said conclusively that the blood on anybody's clothes was of any particular person and no one else. In other words, there is no evidence that Sramveer's blood was on his trouser or on Ram Kumar Kalyan's pyjama. The blood samples on both these garments may have been of the other persons such as of Renuka or Nabheet.

In cross examination the witness admitted that he had not received any representative sample of Sramveer's parents or Nabheet's parents or even of Ram Kumar Kalyan. Even more important he has admitted that since there was no representative sample of any person he had not given any opinion that the blood on items No.2 and 3 i.e. said garments was that of a particular person.

(73) All the learned counsel including Mr.Bajaj admitted that this was a serious lapse in the investigation. Another serious lapse was as admitted by the witness that he had not compared the DNA profile of parcel No.3 i.e. Nabheet's clothes with any of the DNA profiles of the other parcels and that as such he was unable to give any opinion in that regard. Equally important is his admission in cross examination that he had not established the source of DNA profiles of items No.2 and 3 Ram Kumar Kalyan's and Sramveer's garments since he did not have any representative sample. Lastly he admitted that he did not compare the DNA profiles of items No.4 and 5 which were the 'underwear' and 'T-shirt' of Sramveer.

(74) Thus even assuming that the DNA profiles of the samples taken from Sramveer's trouser and Ram Kumar Kalyan's pyjama were the same, the prosecution has not established that the blood samples were of Sramveer either on Sramveer's trouser or on Ram Kumar Kalyan's pyjamas. Merely because the blood was present on Ram Kumar Kalyan's pyjamas it cannot be said that he shot Sramveer. The possibility of the samples on Sramveer's trouser being of Nabheet's blood cannot also be ruled out. It was a small room and the blood from Nabheet upon being shot by Sramveer splattered and therefore could have gone onto Sramveer's clothes especially his trousers.

If the blood of Nabheet was on Ram Kumar Kalyan's clothes, it would not be unexpected. Infact it would be highly expected. Ram Kumar Kalyan could hardly be expected not to touch his son upon

finding him shot dead. Even the samples from Sramveer's shirt were not taken. The evidence is inconclusive. It cannot by any stretch of imagination prove Ram Kumar Kalyan's guilt.

(75) Mr. Bajaj contended that there is nothing to show that the blood had intermingled and that therefore it must be presumed that the blood on Sramveer's clothes was his own blood. For reasons we have already stated it is highly probable that the blood on Sramveer's trouser was Nabheet's blood. Curiously the samples from his shirt were not taken. Unfortunately the blood samples of none of the parties had been taken. PW23 in his report regarding his visit to the scene of crime (Ex.P42) observed in paragraph-B that the FSL team reached the place of occurrence at 1.00 A.M. on 23.04.2008 when it was observed that the pool of blood was lying where Nabheet was lying dead. It also stated that the blood was present on the spot where Sramveer was lying dead. They were all in a small room and the possibility of the blood of Nabheet and Sramveer intermingling cannot be ruled out.

(76) The learned Judge relied heavily upon the evidence of PW 22 in holding Ram Kumar Kalyan guilty. The learned Judge referred to the DNA profiles on the two garments at items No.2 and 3 being the same and observed that the law is well settled that DNA test is a perfect science and if performed properly is infallible. He further observed that Ram Kumar had failed to give any cogent or convincing explanation as to how the blood came on his clothes and had not even stated in his statement under section 313 Cr.P.C. that he had handled his deceased son in any manner. The error was in proceeding on the erroneous basis that it was Sramveer's blood on the garments of Ram Kumar Kalyan and Sramveer. The basis itself was, however, not established.

(77) Ram Kumar Kalyan did not have to prove his innocence. He was entitled to be presumed innocent. It was for the prosecution to prove his guilt. The DNA sampling cannot possibly prove him guilty. The learned Judge also presumed that it was the Sramveer's blood on Ram Kumar Kalyan's pyjama. Without there being any evidence of the same, basing himself on this premise he faulted Ram Kumar Kalyan or not having explained how Sramveer's blood had come on his clothes. The presumption that the blood on Ram Kumar Kalyan's clothes was that of Sramveer, as we have already held is incorrect. There was no evidence to establish the same.

(78) The learned Judge also noted that the DNA report corroborated the version of the complainant that Ram Kumar Kalyan

had fired Sramveer in his neck from close range and that for this reason the blood came on his clothes. There is some confusion here. This finding is on the erroneous premise that it is Sramveer's blood that was found on Ram Kumar Kalyan's pyjama.

(79) Mr. Narula relied upon the following judgments of the Supreme Court:-

(A) In *Kansa Behera* versus *State of Orissa*², the Supreme Court held:-

“11. As regards the recovery of a shirt or a dhoti with bloodstains which according to the serologist's report were stained with human blood but there is no evidence in the report of the serologist about the group of the blood and therefore it could not positively be connected with the deceased. In the evidence of the Investigating Officer or in the report, it is not clearly mentioned as to what were the dimensions of the stains of blood. Few small bloodstains on the clothes of a person may even be of his own blood especially if it is a villager putting on these clothes and living in villages. The evidence about the blood group is only conclusive to connect the bloodstains with the deceased. That evidence is absent and in this view of the matter, in our opinion, even this is not a circumstance on the basis of which any inference could be drawn.” (emphasis supplied).

(B) In *State of Rajasthan* versus *Rajaram*³, the Supreme Court held:-

“21. Coming to the bloodstains on the clothes which were allegedly seized, on being pointed out by the accused, the forensic laboratory report indicated that there were blots of human blood on the shirts and trousers of the accused. There was no effort to find out the blood group. In fact, the High Court noted this position and observed that presence of PW 4 at the time of recovery is doubtful as he has been found to be an unreliable witness. It was observed that even if it is

² 1987(2) RCR (Crl.) 157

³ 2003(8) SCC, 180

accepted that there was existence of blood, this circumstance is not such from which it can be found that the accused was the perpetrator of the crime. In the aforesaid report (Ext. 61) it was clearly stated that the blood group of blood found on the clothes could not be determined. Neither the blood group of the deceased nor that of the accused was determined. In that background, the High Court held that the possibility of the blood being that of the accused cannot be ruled out. In view of the findings recorded by the High Court about the non-acceptability of evidence relating to the alleged extrajudicial confession, the conclusions of the High Court cannot be said to be one which are unsupportable. We decline to interfere in the appeals, and the same are dismissed.” (emphasis supplied).

(80) The judgments support the case of the accused. The DNA tests are of little value unless there is a connection between the blood group on the clothes and the blood group of the accused. That the blood on the clothes cannot positively be said to be of Ram Kumar Kalyan’s and Ram Kumar Kalyan’s blood group was not determined. The link was, therefore, not established.

PW-23 Dr. R.K.Koshal, Assistant Director, Ballistics, FSL, Haryana

(81) This brings us to the question of the gunshot residue (GSR). Mr. Narula pointed out that in fact only nitrite test has been referred to everywhere. In paragraph-55 of the judgment, the learned Judge rejected the contention of the accused that as there was indiscriminate firing in the lobby which admeasures about 12’x15’, there was a possibility of deposit of smoke powder on Ram Kumar Kalyan’s clothes. The learned Judge held that if Ram Kumar Kalyan had not come in close contact with Sramveer there could not have been GSR on his clothes because as per Modi’s commentary on Medical Jurisprudence and Toxicology smoke/powder of hand gun travels in a range of about 60 cm only. This, it was held, supports the version that Ram Kumar Kalyan had fired the shot on Sramveer’s neck as otherwise there is no possibility of his having received the gunshot powder on his clothes.

(82) Firstly, as rightly pointed out by Mr. Narula, it was never the case of the defence that Ram Kumar Kalyan did not go close to

Renuka, Nabheet and Sramveer. It is but obvious that after the firing he would have been around them. It would be unnatural for him not to have been around them. Apart from everything else, his son had been shot dead. It can never be presumed that a father would not go near his son even if the area was large. Nor did Ram Kumar Kalyan ever allege that he had not touched the three persons involved in the incident. Mr. Bajaj's reliance upon the submission in the FIR to the effect that when Sramveer started firing the shots and he was saved by chance he locked the room from inside does not militate against the case of the defence. That was a reference to what happened immediately upon the commencement of the firing. Ram Kumar Kalyan never stated that thereafter he did not come out of the room.

(83) The learned Judge's reliance upon Modi's commentary is also misplaced. In chapter 24, page 543, the author does not state that smoke/powder of a handgun travels only in the range of about 60 cms. That is a misreading of the commentary. What is stated under the heading "Close Distance Phenomena Observed in Firearm Injuries or Shot Holes on Clothing" is as follows:-

"Close Distance Phenomena Observed in Firearm Injuries or Shot Holes on Clothing"

Phenomena	Range and Remarks
.....
3. Tattooing	Handguns upto about 60 cm. Rifles upto 75 cm generally. Shotguns upto 100-300 m (may be found after careful search at higher range)."

The range of 60 cms is, therefore, only in the case of tattooing and not for traces of smoke powder when the gun is fired from a distance. Moreover, this commentary was not even deposed to by any of the witnesses. Had any of the prosecution witnesses referred to the commentary, the learned counsel for the defence would have had an opportunity of cross-examining him and, in any event, at least clarifying what the commentary actually means. Thus, the basis on which the learned Judge relied upon the gunshot residue found on Ram Kumar Kalyan's clothes is erroneous.

(84) That the gunshot residue found on Ram Kumar Kalyan's

clothes does not, in any event, prove his guilt is also clear from various other facts.

(85) As Mr. Narula rightly pointed out, the other witnesses had not given any evidence to the effect that Ram Kumar Kalyan had or must have handled the weapon and fired it. PW23 does not say so. None of the other witnesses also had stated that in view of the facts stated in the report of PW23 Ram Kumar Kalyan must have fired the pistol.

(86) PW23, in paragraph-3 of his report, stated that the gunshot residue/powder particles detection test was performed on both the hands of Sramveer and Nabheet and the test was found positive on the right hand of Sramveer. The report further states that gunshot residue test was also performed on “hands and clothes” of Ram Kumar Kalyan and that nitrite/gunshot residue was found positive on the pyjama and T-shirt of Ram Kumar Kalyan. It is important to note that the report does not state that nitrite/gunshot residue was found on the hands of Ram Kumar Kalyan despite the fact that his hands were also tested.

(87) To this, Mr. Bajaj stated that the test was carried out only at 10.00 A.M. on the next day i.e. after about ten hours. He submitted that it must, therefore, be presumed that in the meantime Ram Kumar Kalyan washed his hands and that, therefore, there were no traces of nitrite/gunshot residue.

(88) This is a hypothetical argument. A clarification was not even sought from the witness. Neither in his report nor in his deposition did the witness state that in the event of the hands being washed gunshot residue would not be found. Mr. Bajaj then submitted that this was a flaw in the investigation. Surely Ram Kumar Kalyan cannot be convicted because of a flaw in the investigation. Moreover, the witness could have clarified this issue in his evidence.

(89) Mr. Bajaj’s reliance upon the report of PW23 (Ex.43) is of no assistance for the report does not state or suggest that Ram Kumar Kalyan handled the weapon. In conclusion, under the caption “RESULT”, it is stated:

“3. Presence of gunshot residues on clothes contained in parcel No.VI shows that the person was in close vicinity to firing.”

Thus, the conclusion of PW23 is only that Ram Kumar Kalyan

was in close vicinity to firing and not that he handled the weapon. The witnesses do not even state that the extent of gunshot residue found on the clothes of Ram Kumar Kalyan would indicate that he had handled the weapon. Mr. Narula rightly submitted that if an aspect, which helps determine a question of fact, is not dealt with by the prosecution/witnesses of the prosecution an inference cannot be drawn against the accused. It is not necessary to consider his further submission that in that case an inference must be drawn in favour of the accused.

(90) There is an additional aspect on this issue. As we pointed out earlier, there was no evidence indicating where Ram Kumar Kalyan's clothes were for two days. We referred earlier to the evidence of PW14 and PW17. They received the clothes. Their affidavits specify the clothes that they received which did not include Ram Kumar Kalyan's clothes. However, a day or two later, the case property was handed back to them when Ram Kumar Kalyan's clothes suddenly appeared. There is no evidence where Ram Kumar Kalyan's clothes were during this period. Even if this fact by itself was not sufficient to show an infirmity in the prosecution case, taken together with the other circumstances that we have referred to, it further weakens the prosecution's case. Based on this evidence it is sufficient to conclude that the prosecution has failed to establish the guilt of Ram Kumar Kalyan on the basis of the gunshot residue found on his clothes.

(91) There is yet another discrepancy in respect of Ram Kumar Kalyan's clothes. Ex.P36 is a translation of the certified copy of the recovery memos of clothes prepared by the Inspector-SHO Karnal on 23.04.2008. It is in respect of the parcel of clothes worn by Ram Kumar Kalyan at the time of occurrence. It states "the lower of sky colour and yellow coloured t-shirt produced". The reference to the lower we presume is to his 'pyjama'. PW22 Dr.Pandu Guguloth, however, states the colour of the pyjama to be grey whereas the recovery memos state it to be sky colour which presumably is the colour blue. The prosecution has not offered any explanation for this difference in colour. The recovery memo was signed by Ram Kumar Kalyan as well. The discrepancy in the colour of the T-shirt is not significant-whereas in the recovery memo it is stated to be yellow PW22 described it as 'orange'.

(92) Mr. Kapil Aggarwal, learned Additional Advocate General appearing for the State of Haryana adopted Mr. Bajaj's arguments. However, as we mentioned earlier, he did not adopt Mr.Bajaj's

contention that the evidence of PW23 ought to be discarded.

(93) The evidence of defence witness-3 (DW3) Dr.S.K.Dhatarwal, Professor Forensic Medicine, Post Graduate Institute of Medical Science, Rohtak is not of much relevance. He had nothing whatsoever to do with the case. He has stated that he had gone through the judicial file and has given his expert opinion about the injuries. He, however, does not specify which part of which judicial file he had examined.

(94) Mr. Narula then submitted that even assuming the prosecution case that Sramveer shot himself on the chest is accepted, the shot in the neck of Sramveer was not fired by Ram Kumar Kalyan. He demonstrated this from the evidence of PW8 and with the use of two models-a skelton and a human face. The trajectory of the bullet according to him is clear from the wounds. The trajectory he submitted was such that the bullet could have been fired only by someone lying down or at least crouching on the floor next to Sramveer after he had fallen down.

(95) PW8 in his examination-in-chief stated:-

“3. There was another lacerated wound measuring 1 x 0.75 cm was present on the right side of the neck. 4 cm below tip of the chin, touching mid line with inverted margins and with blackening of the skin in an surrounding area of 2 x 1.7 cm. Singing of the hairs on the chin was present.

4. The left eye ball and eye lids were swollen. Both the eyes were congested.

On probing injury No.3, the track was going upwards, outwards towards the left side. On dissection the hard palate inferior wall of maxillary antrum and roof of the antrum of the left side were fractured into pieces. Part of the metallic object was impacted in the left eye wall and a part of the metallic object was present in the left frontal sinus. Extra dural haemotoma was present in both the frontal lobes and the left maxillary antrum was full of blood.”

The bullet therefore entered the right side of the neck and then travelled upwards, outwards and towards the left. Renuka Kalyan as we will shortly see stated that Ram Kumar Kalyan fired the shot from a distance and while Sramveer was on the floor. In that event the bullet

would never have travelled this path. The angle is totally different. The bullet does not upon entering the neck take a turn to the left. This evidence is consistent with the person firing the pistol from below. This even Mr. Bajaj admits. Mr. Bajaj attempted to meet this by contending that Ram Kumar Kalyan crouched on the floor right next to Sramveer and fired the pistol.

(96) It is not Renuka Kalyan's case that Ram Kumar Kalyan at any stage during the occurrence even crouched near Sramveer. Mr. Bajaj invited us to presume that Ram Kumar Kalyan lay down next to Sramveer or at least crouched near Sramveer and then fired the shot. On an issue as crucial as this in a criminal case a Court cannot speculate to in this manner and to this extent. There is not a whisper from any of the witnesses not even Renuka, to this effect. This is merely a submission across the bar in this appeal. The suggestion was not even made before the learned trial Judge. It is contrary to Renuka's complaint to the Chief Minister dated 18.02.2009 (Ex.P21) in which she stated:

“then my mother-in-law instigated my father-in-law who made a fire on the chin of my brother Sramveer from a little distance and also made fire on her left ear and after this she fell down”.

Renuka the eyewitness herself stated that “Ram Kumar Kalyan fired the gun on her brother's chin from a little distance”. The eye witness herself having said this there is no question of presuming that Ram Kumar Kalyan was lying down or crouching near Sramveer when he fired the shot.

(97) The question that really arises is whether Ram Kumar Kalyan at all fired the shot as alleged by Renuka.

(98) As we noted earlier PW8 stated that on the neck it was a near contact wound. We analysed this evidence and held earlier that this was consistent with the case of the accused that the injury was suicidal and not homicidal. PW8 is a prosecution witness. At the cost of repetition there was no application to declare him hostile and he was not even re-examined. This was his testimony. The testimony to this effect has not even been discredited by any other witness. It has not even been contradicted by any other witness. This is apart from the fact whether Renuka was even in a position to witness this shot which was admittedly fired after Renuka was injured by a bullet. We will deal with this issue further while discussing Renuka's evidence.

(99) In the result, the evidence of the witnesses other than Renuka and her father Ranbir Singh does not support the case of the prosecution. Infact the evidence of some of the prosecution witnesses militates against the case of the prosecution. In material respects it establishes the defence. Indeed it establishes the defence to such an extent that Mr.Bajaj found himself contradicting his own witnesses and inviting the Court to disbelieve them in material respects. On the basis of the evidence of these witnesses the prosecution can by no stretch of imagination be said to have proved Ram Kumar Kalyan's guilt beyond reasonable doubt. On the basis of the evidence of these witnesses we are infact inclined to hold that the prosecution has not established the case against Ram Kumar Kalyan even if we were to apply the civil law test of balance of probabilities. On the basis of this evidence we are infact of the view that Ram Kumar Kalyan did not fire the shot.

(100) Mr. Bajaj's submission that the defence cannot rely upon the evidence of the prosecution witnesses is also unfounded. In *Javed Masood and another* versus *State of Rajasthan*⁴, the Supreme Court held:-

“13. This Court in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)* [(2005) 5 SCC 258 : 2005 SCC (Cri) 1037] observed: (SCC pp. 270-71, paras 30-31)

“30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan* [(2005) 5 SCC 272 : 2005 SCC (Cri) 1050] . In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared 'hostile'. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police in which the police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, the accused can rely on that evidence.”

⁴ 2010(2) RCR (CrI.) 285

The proposition of law stated in the said judgment is equally applicable to the facts in hand. The judgment applies with greater force in respect of prosecution witnesses who are not interested persons.

(101) Mr. Bajaj submitted that there were certain lapses in the investigation and the prosecution, therefore, cannot suffer on account thereof. We are not inclined to accept this submission in the facts and circumstances of the case. We have not found the accused or any one on their behalf responsible for any lapse in the investigation. Flaws in the investigation, therefore, cannot possibly prejudice the accused. In *State of Punjab* versus *Bhajan Singh and others*,⁵ the Supreme Court held:-

“14. The learned Sessions Judge in the course of his judgment has observed that the doctor who performed post-mortem examination was careless inasmuch as he failed to send the two dead bodies to the Professor of Anatomy who might have been in a position to express opinion after examining the hyoid bone and cervical vertebra as to whether the death of the two deceased persons was due to strangulation. Although it may be that it would have been more appropriate on the part of the doctor to have sent the dead bodies to an anatomy expert, the fact that the doctor did not do so cannot be a ground for drawing an inference adverse to the accused. The accused cannot be made to suffer because of that omission of the doctor. It would indeed be contrary to all accepted principles to give benefit of that omission to the prosecution. The onus in a criminal trial is upon the prosecution to prove the guilt of the accused. If there be any gap or lacuna in the prosecution evidence, the accused and not the prosecution would be entitled to get the benefit of that.”

(102) This brings us to the evidence of Renuka (PW11) and her father Ranbir Singh (PW10). PW10 Ranbir Singh, Advocate, father of Sramveer and PW11 Renuka Kalyan.

PW10 Ranbir Singh, Advocate, father of Sramveer and PW11 Renuka Kalyan.

(103) ~~Ranbir Singh was not a witness to the occurrence. He was~~

⁵ 1975 SCC (Cri.) 584

informed of the same by his daughter Renuka and deposed what, according to him, transpired thereafter. He referred to the attempts on the part of his family and that of Ram Kumar Kalyan's family to settle the dispute relating to the estate of Nabheet through the intervention of the senior Advocate R.S. Cheema. His evidence assumes significance in CRM-M-32789 of 2013 against the order refusing process against the advocate as well as in the civil suit filed by his daughter Renuka to challenge Nabheet's alleged will and to seek reliefs in respect of the properties that allegedly constituted his estate. His evidence, therefore, is of no assistance in establishing Ram Kumar Kalyan's guilt. However, the answers elicited from him in cross-examination are of considerable importance for the defence.

(104) We will not, therefore, refer to Ranbir Singh's evidence in detail. The evidence would be referred to only so far as it is relevant to the charge against the accused. As we will elaborate shortly hereafter, he admits having knowledge of the alleged crime by Ram Kumar Kalyan around a fortnight after the incident i.e. around 6/7th May, 2008. He admits that he did nothing in the matter despite the same to bring Ram Kumar Kalyan to justice or to even report his alleged crime. His behaviour and his daughter Renuka's behaviour have come in for strong criticism by the learned Judge. If, in fact, Ram Kumar Kalyan had shot Sramveer and Renuka, PW11, and her father Ranbir Singh, PW10 knew of it and yet proceeded with the negotiations for the settlement of the property dispute between the families, it would indeed have been shocking and the adverse comments by the learned Judge would be entirely justified. We, however, view these facts in an entirely different perspective as indicated later.

(105) In his examination-in-chief, Ranbir Singh stated as follows: On 22.04.2008 Nabheet came to his house at 8.30 P.M. and asked Renuka to come down which she did with her daughter Anannya. Nabheet took away Anannya forcibly and went away. This is contrary to Renuka's statement in her cross examination where she stated that as Anannya was unwell and her medical check up was required to be done and as Nabheet had not taken her for a medical check up on that day, she asked him to get Ananya medically examined. She further stated that on her saying so Nabheet took Ananya within 2 or 3 minutes. Renuka then volunteered that he took her forcibly. What she volunteered was an afterthought. If she had admittedly asked him to take Ananya for a medical check up and he did so, there would be no

question of his having taken Ananya forcibly.

In his examination-in-chief, Ranbir Singh further stated as follows: Thereafter, Sramveer and Renuka went to the Ram Kumar Kalyan's house to bring Anannya back as Renuka could not bear the separation from her daughter. At 12 midnight (from the call records it is 11:52 P.M.), he received a call from Ram Kumar Kalyan stating that firing had taken place at his house and Renuka and Nabheet had died but that Sramveer was still alive. He with his wife went to Ram Kumar Kalyan's house only to find that Sramveer, Nabheet and Renuka were not there but had been taken to the hospital by the police. Ram Kumar Kalyan was talking on the phone while his wife Om Lata Kalyan and her sister were weeping. He overheard Ram Kumar Kalyan telling someone on the phone "*Bhai saab aap sambhal lena*" (brother now look after the things/take care). His sister's son informed him on the phone that Nabheet and Sramveer had died but that Renuka was alive. He asked him to take Renuka to a hospital in Delhi.

At 2.30 A.M. SHO, Sadar visited his house enquiring about the weapon to which he disclosed that he had three weapons of which two were in the house and the third was taken by Sramveer by breaking open the almirah without his consent. He handed over the two weapons to the SHO. The SHO left the house after inspecting the almirah. It is important to note here that the prosecution examined PW12 who stated that he had been asked to inspect the almirah on 29.04.2009 i.e. after about a year of the incident but did not examine SHO, Sadar who, according to him, had inspected the almirah two and a half hours after the incident. We have already dealt with the evidence of PW 12 in detail regarding the almirah.

The examination-in-chief continues as follows: The very next day after the incident he came to know of the FIR filed by Ram Kumar Kalyan registered against him and his family. On the same day he received a telephonic call from Rajinder Singh Cheema, Advocate, who advised him to settle the matter and stated that he would be instrumental in bringing about the settlement as he was close to both the families. He expressed his willingness to do so. After a few days, he paid a condolence visit when a similar conversation took place. The advocate left stating that he would do the needful after the period of mourning. However, during the period of mourning on 22.05.2008, Ram Kumar Kalyan called him insisting on a meeting to be attended by him, his brother-in-law, Ram Kumar Kalyan and his maternal uncle

Ram Kishan and that the matter be settled through the advocate. Ram Kumar Kalyan insisted on the settlement during the period of mourning despite his resistance. The witness then gave details of the meetings to explore a settlement.

(106) Three things are of vital importance. Firstly, the meetings were called regarding a settlement relating to the properties. Secondly, they were attended by the various members of both the families. Thirdly, there is a reference to meetings held on 12.05.2008, 17.05.2008, 20/21.05.2008, 26.05.2008 and 28.05.2008. During these meetings, affidavits were made and draft settlement deeds exchanged, changes were made by the advocate and the witness who himself is an advocate of considerable standing. There is a reference not to a will but to wills as also the preparation of a will. Even more important, on 28.05.2008, the advocate went to this witness's house and met Renuka also who by then had been discharged from the Apollo Hospital. The advocate allegedly told Renuka that he would settle the matter amicably. We will presume, that Ranbir Singh started getting suspicious in June, 2008, when he visited the office of the Estate Officer, HUDA, Karnal and came to know that on the basis of an alleged will and the affidavits of his daughter Renuka a plot standing in Nabheet's name had been transferred in the name of Om Lata. He stated that he immediately called the advocate on his mobile and informed him about the fabricated will. The advocate informed him that he had himself been shown two wills by Ram Kishan, that he was returning to India on 26.06.2008 and, therefore, he would change the will with a normal will. Ranbir Singh says that somehow he believed him. We must pause here to comment that his evidence which comes in the examination-in-chief itself suggests that Ranbir Singh agreed to the will being changed. Presumably if the changed will was acceptable to him he would have had no objection to it. In other words, he as an advocate did not respond by stating that the will cannot be changed and that there can be no question of a will being changed after the death of the person allegedly making it. That, however, is a different matter which would be relevant in the other proceedings.

(107) On the advocate's return, talks of compromise continued. Astounding as it sounds, Ranbir Singh states again in his examination-in-chief: "I again asked him for changing the Will, but after talking to the accused party Mr. Cheema informed me in the end of July that the other party is not ready to change the Will". The earlier statement was

obviously not accidental. It was consciously made. The witness was himself actually seeking the change of the Will of a dead person. The evidence goes on to narrate the further talks of settlement, the filing of the suit, the dismissal thereof, the application as well as the order on the application for restoration. He also refers to the complaints including the complaint that we have already referred to.

(108) Thus, up to the stage of the examination-in-chief, the witness states that on the very next day after the death of his son he entered into negotiations with Ram Kumar Kalyan through the intervention of the advocate and at times in the presence of the members of both the families. It must be noted that these negotiations went on into the month of July and were vigorously being pursued up to the end of May.

(109) Now comes another crucial fact. Ranbir Singh stated as follows:-

“All the facts mentioned in the complainant (*sic*) in para no.3 were also disclosed to me by my daughter when she came back to Karnal after discharge from hospital at Delhi and I also informed my daughter about all the sequence of events from the day of occurrence till discharge and my daughter asked me to take action against the accused persons but I asked her that since I have assured and promised Mr. Cheema for amicable settlement we will not go for any action. However when the settlement fails and a cheating was done with us my daughter filed the present complaint.”

In cross-examination, he stated as under:-

“For the first time I came to know about the actual facts from my daughter once I visited her in the hospital, but complete facts were disclosed by her to me when she returned back after treatment to my house on 22.5.2008, but I do not remember the date when I visited my daughter at hospital at Delhi, but as far as I remember it was after fourteen or fifteen days of the incident. I came to know that on 1.5.2008 Ram Kumar had moved a complaint dated 29.4.2008 to the police for implicating me and my wife, my daughter as conspirators in the murder of his son. When for the first time I met my daughter I got a hint as to how my

son had been killed and who had killed, but complete facts came to my notice only on 22.5.2008. It is correct that on 22.5.2008 after coming to know about the real facts, I got prepared the affidavits of my own daughter Renuka, Ram Kumar and Om Lata, but those facts were not mentioned in the affidavit dated 26.5.2008. Volunteered that this all was done on the assurance Mr. R.S. Cheema, who has assured for the amicable settlement of the case. It is correct that the offence under Section 302 IPC is non compoundable. It is incorrect to say that in view of the affidavits dated 26.5.2008, Ram Kumar would have been saved from the murder charges. Volunteered that but the FIR must have been cancelled. It is correct that we have moved an application under section 156(3) Cr.P.C. for cancelling the FIR registered about this incident, but it is incorrect that the affidavits dated 26.5.2008 were also relied up on in that application. I have seen the photo copy of the above mentioned application Mark- D1 which bears my signatures and I admit the same. I have heard the contents of the application Mark-D1 which are correct. It is correct in this application the reference of the above mentioned affidavits. Volunteered that only gist of the affidavits is mentioned. I have never lodged any complaint from my side after coming to know about the complete facts from my daughter on 22.5.2008. Volunteered that it was in view of the compromise initiated by Mr. R.S. Cheema, as explained by me in my examination in chief. It is correct that even after failure of the compromise I have not lodged any complaint with the police or in the court till today.”

We set out earlier an extract from Renuka’s evidence where she stated that she disclosed all the details of the incident to her father and requested him to take action against the accused but he did not do so stating that talks of a compromise were going on.

(110)The learned Judge has passed strictures against Ranbir Singh and his daughter. He observed that their act and conduct is condemnable as for the sake of property, they entered into a conspiracy to screen the real offender and that if they had got the property as per a settlement or otherwise, the crime would have gone unnoticed. The learned Judge further observed that there were various improvements in

Renuka and Ranbir Singh's testimonies and that they had tried to malign the image of senior police functionaries and of a senior member of the legal fraternity but they had failed to prove conspiracy between them. Had we agreed with the findings of the learned Judge, we would have been entirely in agreement with these observations as well. It is, however, precisely their conduct together with certain other facts indicated later that leads us to the conclusion that Ram Kumar Kalyan had not fired the shot at Sramveer. To recapitulate the incident occurred on 22.04.2008, Renuka was admitted to hospital within a few minutes of the incident. Ranbir Singh went to visit her about two weeks thereafter i.e. around 6/7th May, 2008 when he got a hint as to how his son had been killed and who had killed him. Thus, according to Ranbir Singh, he was informed around 6/7th May, 2008 that Ram Kumar Kalyan had killed his son. In any event, he was told the same by 22nd May, 2008 when, according to him, the complete facts came to his notice upon the return of his daughter Renuka from the hospital. Thus, according to him, by 6/7th May and, in any event, by 22nd May, 2008 he had been informed that Ram Kumar Kalyan had killed his son. However, he admitted earlier that the talks for a settlement between the two families which centered around properties continued even thereafter. Renuka's complaint to the Chief Minister made 382 days after the incident for the first time made the said allegations against the accused.

(111)It was suggested on behalf of the accused that that it is impossible to believe that a sister who has seen her brother being shot by a person and a father being told by her of the same would value property more than bringing to justice their brother's/son's killer. We will come to this later after dealing with Renuka's evidence in this regard as well.

(112)We hasten to add that we do not express any views on the merits of the rival cases regarding the will, the affidavits and the deeds of settlement. Nor do we express any view about the manner in which Ram Kumar Kalyan, Om Lata Kalyan and/or members of their families including their deceased son Nabheet treated Renuka prior to the incident. They may have treated her badly. They may have made demands for dowry. Those are issues, however, which would be adjudicated upon in independent proceedings.PW-11 Renuka Kalyan

(113)Mr. Narula sought to establish that the injury on Renuka's jaw was from a bullet that deflected from the wall. Apart from the

physical evidence relating to the bullet itself, he also relied upon the evidence pertaining to Renuka to establish that she had actually not witnessed the incident. The learned Judge in paragraph-60 of the judgment rightly did not accept Renuka's version of the incident. Renuka Kalyan stated in her cross-examination that Ram Kumar Kalyan had fired at her from within inches. PW2, in his cross-examination, stated that in both the injuries there was no blackening or tattooing. To say the least, this casts a doubt about the weapon having been fired on Renuka from only within inches. Blackening and tattooing are normally indicative of a contact wound, the weapon being fired from an extremely close range.

(114) More important, PW23, in paragraph (B)10 of his report stated:-

“(B) Observations from the place of occurrence:-

10. A cement chip off mark was found present on wall near door D/3 at a height of about 3.5ft from the floor. It was found to be a bullet hit mark.”

The following cross-examination on this aspect of PW23 is of utmost importance.

“It is correct that as mentioned in sub para 10 of para B, it was a bullet hit mark and in sub para 11 the observation relates to a bullet hole in the mash of the door. It is correct that as observed by Dr. Balwan Singh in MLR Ex.P9 there were two gun shot injuries on the person of Renuka. Volunteered that however I have not examined at the spot but later on I have examined Renuka during the investigation of this case. It is correct that after going through the medical record of Renuka including records of Apollo Hospital it is found that there were two bullets injuries to Renuka one bullet has been removed whereas the other bullet is still embedded in her mandible (jaw). Possibility of bullet found on the left middle of clavicle in the body of Renuka can be because being a exited or deflected bullet from any of the two gun shot injuries suffered by Nabheet or otherwise. The possibility of the bullet on the mandible of Renuka being deflected from a hard surface such as wall etc. cannot be ruled out.”

(115) There are two important facts from the report of PW23 and

from his cross-examination. Firstly, there was, in fact, a bullet mark on the wall. Secondly, he expressly admitted the possibility of the bullet found in Renuka's jaw being on account of an exited or deflected bullet from any of the two gunshot injuries suffered by Nabheet or otherwise. He stated that the possibility of the bullet on the mandible (jaw) of Renuka being deflected from a hard surface such as a wall, etc. cannot be ruled out. The prosecution has, therefore, not only failed to rule out any other possibility but has, in fact, established that the bullet was deflected from a hard surface. This militates directly against Renuka's evidence. The learned Judge, therefore, rightly disbelieved Renuka's evidence that Ram Kumar Kalyan fired at her. The charge under section 302 and 307 IPC against Ram Kumar Kalyan and even against Om Lata Kalyan qua an attempt to kill Renuka, therefore, fails.

(116) There is another aspect that casts a doubt on Renuka's version which, considered along with the other evidence, is a strong argument in favour of the defence. Renuka at that time was pregnant. Tragically, she lost her baby in the incident. Exhibit P-13, which is the discharge summary from the Apollo Hospital, New Delhi, states that she had a history of loss of consciousness and vomiting. Both the injuries were such that it could lead to her being unconscious. PW2 only opined that there was a possibility of her remaining in her senses for a few minutes after the chest injury enabling her to witness the subsequent incident. However, in cross-examination, he admitted the possibility of Renuka being unconscious immediately on receiving injury No.2 in the chest, due to mental stress of pregnancy and collection of 600 ml fluid in the plural cavity.

(117) In the circumstances, it is not only possible but highly probable that both the gunshot injuries on Renuka were on account of a deflected bullet.

(118) This in turn supports the case of the accused that Sramveer first shot himself on the neck and after falling down shot himself on the chest. That the FIR-182 did not mention about the bullet being deflected upon a hard surface would make no difference. The FIR was filed at 8.00 A.M. on the next day i.e. within 48 hours. The statement was in fact recorded at around 6.00 A.M. i.e. within about six hours. During this time Ram Kumar was not idle. He made calls to the police authorities and Ranbir Singh and arranged for Sramveer, Nabheet and Renuka to be taken to the Government Hospital at Karnal. Renuka was in fact examined latest by 12.00 A.M. i.e. within less than half an hour

of the incident. He cannot possibly be expected to have analysed the issue relating to ballistics and even the mark on the wall at this point of time.

(119) In her cross-examination, Renuka indicated the position of each of the persons as follows:-

“After ten minutes of reaching in my in laws house Shramvir fired the first shot and at that time I was at a distance of about 10-12 inches away from Sharamvir. Again said 4-5 feet away from Sharamvir. Shramvir fired the first shot after coming out of the door of master bed room of my in laws house and he was on the door itself when he fired. At that time I was standing towards the side where the fridge was lying. When first fire hit me I simply cried Sharamvir and I did not ask him not to fire or what he is doing nor reacting any manner. When the second fire fired by Shramvir hit Nabheet he was catching hold of me and he was on my backside. When Shramvir shot himself he was standing at the same place from where he had fired on us and he fell down at that place itself. Nabheet after suffering the fire shot fell down at a place at a distance of two three feet from the fridge. I had not fallen down despite one fire shot. I have not noticed whether Sharamvir fired all four shots continuously or he cocked the pistol after each fire. None of the fire hit any wall or any other article. Again said I do not remember in this regard. Ram Kumar fired on me from very close range which was within inches. I was standing at that time. The fire shot injury to Sharamvir was given from a close range by Ram Kumar. After firing on me Ram Kumar had not fired further. The entire incident lasts about four five minutes. I became unconscious and gain consciousness only in Apollo Hospital. I had also pointed out the scene of crime and the actual placement of every body during the occurrence to the scene of crime team when it came to examine the spot. I fell down near the fridge and not the dining table.”

(120) The position of the persons indicated by Renuka is different from the site plan produced by the prosecution at Ex.P42, which is a part of the report of the visit to the scene of crime. In this report, Nabheet is shown standing just outside Ram Kumar Kalyan’s bedroom.

Renuka is shown standing closer to the opposite wall. Sramveer is shown standing behind her and to the right.

(121)Mr. Bajaj sought to explain away this discrepancy on the basis that the site plan was prepared much later and as per the instructions of Ram Kumar Kalyan. The site plan was produced by and exhibited at the instance of the prosecution. The prosecution did not contend during the trial that the site plan is wrong. Nor did they seek any clarification from their own witness who produced it. The defence is, therefore, entitled to rely upon this discrepancy.

(122)One thing is, however, common in the evidence of Renuka and in the site plan and that is that Renuka was standing opposite the wall which had the bullet mark and which could account for the deflection of the bullet on to her jaw. Faced with this, Mr. Bajaj stated that the bullet mark was at a height of 3.5 feet. It is not possible to speculate against the accused that the bullet would have deflected only at the same height. It was in any event not found anywhere else.

(123)Mr. Narula then relied upon various circumstances to indicate why Renuka's evidence must even otherwise not be accepted. He relied upon the fact that Renuka Kalyan had changed her version on the following aspects:-

(A) In her examination-in-chief, she stated that on 23.03.2008 at about 8.30 P.M. Nabheet and Ram Kumar Kalyan left her outside the main gate of her house and that since then she had been residing with her parents having been left there against her wishes. In her cross-examination, she admitted that in paragraph 2 of her complaint Ex.P21, she mentioned that her household articles were shifted to a separate house in Karnal and that she never made a complaint about her having been thrown out of the matrimonial home and having been forced to live separately.

This is not a clear contradiction. It is true that the accused have alleged that she used to harass her husband Nabheet into living separately and leaving his parents' house. That is another thing. However, the statement in her cross-examination cannot be said to be a version contrary to the one in her examination-in-chief. The contradiction is only to the effect that whereas in her examination-in-chief she stated that she was forced to reside with her parents, in her examination-in-chief she suggests that she was forced to live

separately. The cross-examination only suggests that her demand for a separate residence was acceded to and that some if not all the household articles were shifted to another house.

(B) In her complaint (Ex.P21) to the police, she stated that when her brother fired the pistol the bullet hit her on the left of her chest and not that she was hit by the bullet when she lunged forward to save her husband. However, in her complaint before the learned Chief Judicial Magistrate she stated, in the part we have already quoted, that when Sramveer fired at Nabheet the bullet hit her in the chest when she came forward to save her husband.

(C) In her examination-in-chief, Renuka stated that at 8.30 A.M. on 22.04.2008, Nabheet went to her parental house where she was staying and forcibly took away their daughter Anannya whereas in her cross-examination she stated that Anannya was not well on that day and her medical check up was required to be done. She further stated that Nabheet had not taken her for the medical check up on that day and that she asked him to get Anannya medically examined whereupon Nabheet took her within 2 or 3 minutes. Renuka then volunteered that he took her forcibly.

(D) It is difficult to understand the statement volunteered by Renuka. She herself stated that she asked Nabheet to take Anannya to get her medically examined and that Nabheet took her for the same. Renuka herself having asked Nabheet to take Anannya for the medical examination, there could be no question of Nabheet having taken Anannya forcibly.

(124) We would not disbelieve Renuka's evidence about the incident merely because of the above contradictions in her testimony. They do not reflect upon Ram Kumar Kalyan's role in the incident. However, these contradictions, considered with all the other circumstances we have referred to, make it difficult to accept her statements without proper verification.

(125) Mr. Narula strongly contended that there is a clear motive for Renuka and Ranbir Singh to falsely implicate the accused. He submitted as follows: The motive was the transfer of the property to Renuka's name. Almost immediately after the incident, there were negotiations between the parties for settling the issue relating to the property/Nabheet's estate. There is an inherent improbability of either

Renuka Kalyan or her father Ranbir Singh ever having believed that Ram Kumar Kalyan had killed or even tried to kill Sramveer or Renuka. If Renuka had actually witnessed Ram Kumar Kalyan killing her brother, it is next to impossible that she would have preferred to acquire property rather than bringing her brother's killer to justice. Similarly, it is next to impossible to believe that Ram Kumar Kalyan would have preferred to see his daughter acquiring property rather than bringing his son's killer to justice. These allegations were made more than a year after the incident and only after the settlement regarding the property did not fructify as alleged by Ram Kumar Kalyan. This is not a mere question of delay. The delay reveals a story in itself. The delay and what transpired during this period makes it inherently improbable that Renuka witnessed Ram Kumar Kalyan fire a shot on her brother's neck and Om Lata Kalyan pressing him to do so.

(126) This may be one way of looking at it. However, after deliberating on this important aspect of the case we are inclined to view it differently. In this regard Mr. Narula placed reliance upon the judgments of the Supreme Court in support of his contention that Renuka had given false evidence wilfully and consciously. We will refer to them shortly.

The facts leading to the allegations by Renuka that Ram Kumar Kalyan and Om Lata Kalyan were responsible for the killing of her brother are important. The complaint was made for the first time 382 days after the incident.

The incident took place at about 11.40 P.M. on 22.04.2008. On 24.04.2008, Ranbir Singh came to know that Ram Kumar Kalyan had filed FIR No.182. About 14/15 days after the incident i.e. 6/7th May, 2008, Ranbir Singh visited Renuka at the Apollo Hospital, New Delhi, when, according to him, he came to know about the actual facts from his daughter. He further states in his cross-examination, the relevant part whereof we quoted earlier, that at this meeting he got a hint as to how his son had been killed and who had killed him. This indicates that Renuka at least told him on that day that Ram Kumar Kalyan had killed him. It is not suggested that Renuka told Ranbir Singh on that day that somebody else had killed him. The further statement in his cross-examination that Renuka Kalyan told him the complete facts on 22.05.2008 is of no consequence. In any event, by 22.05.2008, even according to Ranbir Singh he knew the complete details. He admitted that throughout this period and even after 22.05.2008 the negotiations

continued between the two families through the advocate. In fact, the negotiations went into the month of June/July after the return of the advocate from Canada.

(127) On 23.05.2008, DW4-Harbans Lal, the then Inspector, visited the Government Hospital, Karnal, where he met Renuka. The doctor declared Renuka unfit to make a statement. On 08.05.2008, DW4 visited Sewa Sadan where Renuka had shifted from Apollo Hospital but had refused to make a statement. He met Renuka again on 12.05.2008 when again she refused to make a statement. On 23.05.2008, he visited Renuka at her parents' house where again she did not make a statement. On that day, Renuka's cousin Randeep Singh was also present. DW4, therefore, did all he could to discharge his functions as an efficient police officer but could not record a statement due to no fault of his. On 26.05.2008, Renuka filed an affidavit, Ex.D1, in which she stated that Sramveer had committed suicide. On 27.05.2008, she filed an affidavit relinquishing her interest in the property. The affidavit was identified by Ranbir Singh. On 07.06.2008, Renuka filed another affidavit confirming the affidavit dated 26.05.2008 which was identified by her maternal uncle. It is possible that Renuka declined to make the statement on three occasions to the police officer and filed three affidavits to the above effect as she was not certain that her brother had not committed suicide but had been killed by Ram Kumar Kalyan. It is equally difficult to believe that Ranbir Singh would have agreed to his daughter's aforesaid acts and would have approved the same if he was told by Renuka with certainty that his son had not committed suicide but had been killed by Ram Kumar Kalyan. It is on the complaint dated 18.02.2009 to the Chief Minister that Renuka for the first time alleged that Ram Kumar Kalyan had killed Sramveer.

(128) Before stating our perception of these facts it would be convenient here to refer to the judgments relied upon by Mr. Narula in support of his submission that Renuka and Ranbir Singh interestingly given false evidence.

(A) In *Thulia Kali* versus *State of Tamilnadu*⁶, the Supreme Court held:-

“12.....First information report in a criminal case is an extremely vital and valuable piece of evidence for

⁶ 1972(3) SCC 393

the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained”.....(emphasis supplied).

(B) In *Ramji Surjya* versus *State of Maharashtra*⁷, the Supreme Court held:-

“8. There is no doubt that even where there is only a sole eyewitness of a crime, a conviction may be recorded against the accused concerned provided the court which hears such witness regards him as honest and truthful. But prudence requires that some corroboration should be sought from the other prosecution evidence in support of the testimony of a solitary witness particularly where such witness also happens to be closely related to the deceased and the accused are those against whom some motive or ill will is suggested. Now in the instant case a careful analysis of the evidence relating to the inordinate delay involved in the giving of the first information to the police and the other inherent inconsistencies in the evidence of the sole eyewitness i.e. Surjabai (PW 2) shows that her evidence cannot be considered as sufficient to find the accused guilty. The first information (Ex. P-10) itself appears to be one prepared after some deliberation. The role attributed to

⁷ 1983(3) SCC 629

Gumba (PW 5) the former Police Patel in the prosecution evidence compels the court to look for corroboration from the other prosecution evidence before accepting the evidence of Surjabai (PW2)”.....(emphasis supplied).

(129)The above judgments support the accused but in the facts of this case not to the extent contended by Mr.Narula. The delay in the present case is of 382 days which is considerable. The explanation for the delay is not satisfactory. It is difficult to accept it for reasons we have already stated. We must examine the evidence of the eye witness Renuka with considerable circumspection.

(130)Having said that, however, considering the above judgments and the facts and circumstances which we have referred to we would not accept Mr. Narula’s contention that Renuka and Ranbir Singh deliberately and consciously gave false evidence. In our view, the delay in filing the complaint and the events that transpired after the occurrence can be viewed in a different manner which indicates a possibility that Renuka’s recollection of the occurrence was blurred or inaccurate on account of various factors. Firstly, it must be remembered that at that time Renuka was expecting a child which she tragically lost on account of the occurrence. The evidence of PW2 Dr.Balwan Singh, Medical Officer, Government Hospital, Karnal, indicates that she was semiconscious when she arrived at the hospital, although he stated that Renuka could have witnessed the subsequent events for a few minutes. In cross examination he admitted the possibility of Renuka being unconscious immediately on receiving the injury on the chest and due to mental stress of pregnancy and collection of 600 ML fluid in the plural cavity. He admitted that the possibility of Renuka being unconscious in these circumstances cannot be ruled out. The trauma of an incident as serious as this must have had its own effect on her. She lost her brother and her husband within minutes and suffered serious injuries herself. As any parent she must obviously have been anxious throughout about her daughter Ananya’s future and her future as well. The pendency of FIR-182 and the possibility of her family being suspected must have had its own effect. We cannot rule out the possibility of these several serious facts having had their own effect upon Renuka’s recollection of what transpired during the occurrence. It is possible, therefore, that Renuka did not make false statements but was instead a victim of all these circumstances which had an adverse

effect on her recollection. It is also possible that this is how she must have put it to her father Ranbir Singh. Although we have not accepted Renuka's and Ranbir Singh's evidence, we attribute the discrepancies between their evidence on the one hand and the rest of the evidence of the prosecution itself on the other on account of these unfortunate circumstances that Renuka was faced with and must continue to be facing.

(131) We cannot help but express our view that both the families appear to be innocent. After having considered the evidence in great detail, in our view, sramveer's death was suicidal and not homicidal and the injuries on Renuka were not inflicted by Ram Kumar Kalyan at the behest of his wife Om Lata Kalyan or otherwise. Both the families are innocent victims.

(132) Mr. Bajaj relied upon the following observations of the Supreme Court in *Dayal Singh and others* versus *State of Uttaranchal*⁸:-

“22. Now, we may advert to the duty of the court in such cases. In *Sathi Prasad v. State of U.P.* [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab* [(2004) 3 SCC 654 : 2004 SCC (Cri) 851], held: (SCC p. 657, para 5)

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

The observations are clearly distinguishable. Let us assume that there are a few lapses in the investigation. However, what is important is that the evidence of the prosecution witnesses itself does not establish

⁸ 2012(3) SCC (CrI.) 838

the guilt of either of the accused. Further the lapses assuming there were any were definitely not designedly defective. In any event they were not defective on account of the accused or on the part of any one on behalf of the accused. Moreover, what was relied upon was the substantive evidence of the prosecution witnesses. Mr. Bajaj during the hearing sought to disown the evidence which we have held is not permissible for reasons already furnished.

(133)Mr. Bajaj also relied upon paragraphs-29 and 30 of the above judgment which read as under:-

30. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

“34. ... The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert's opinion is accepted, it is not the opinion of the medical officer but [that] of the court.”

(See *Madan Gopal Kakkad v. Naval Dubey* [(1992) 3 SCC 204 : 1992 SCC (Cri) 598 : (1992) 2 SCR 921] , SCC pp. 221-22, para 34.)”.....(emphasis supplied).

These observations do not support the case of the prosecution either. There is a substantial variation between the medical and the ocular evidence. It is not the case of the prosecution that the reports of the other witnesses were perfunctory, unsustainable or the result of deliberate attempt to misdirect the prosecution. Learned counsel appearing on behalf of the State of Haryana did not support Mr. Bajaj's attempt to disown the prosecution witnesses. There was not even a suggestion that the prosecution witnesses other than PW10 and PW11 were the result of any attempt to misdirect the prosecution. As far as the observations in para-30 of the judgment are concerned we are afraid that we are unable to consider the evidence of PW10 or PW11 to be credible and trustworthy at least to such an extent that we would discard the evidence of the other witnesses.

(134)Mr. Bajaj also relied upon para-43 of the judgment of the

Supreme Court in *Yogesh Singh* versus *Mahabeer Singh and others*⁹, which reads as under:-

“43. The learned counsel appearing for the respondents has then tried to create a dent in the prosecution story by pointing out inconsistencies between the ocular evidence and the medical evidence. However, we are not persuaded with this submission since both the Courts below have categorically ruled that the medical evidence was consistent with the ocular evidence and we can safely say that to that extent, it corroborated the direct evidence proffered by the eye-witnesses. We hold that there is no material discrepancy in the medical and ocular evidence and there is no reason to interfere with the judgments of the Courts below on this ground. In any event, it has been consistently held by this Court that the evidentiary value of medical evidence is only corroborative and not conclusive and, hence, in case of a conflict between oral evidence and medical evidence, the former is to be preferred unless the medical evidence completely rules out the oral evidence. [See *Solanki Chimanbhai Ukabhai v. State of Gujarat*, (1983) 2 SCC 174; *Mani Ram v. State of Rajasthan*, 1993 Supp (3) SCC 18; *State of U.P v. Krishna Gopal, State of Haryana v. Bhagirath*, (1999) 5 SCC 96; *Dhirajbhai Gorakhbhai Nayak v State of Gujarat*, (2003) 9 SCC 322; *Thaman Kumar v. State of U.T of Chandigarh*, (2003) 6 SCC 380; *Krishnan v. State*, (2003) 7 SCC 56; *Khambam Raja Reddy v. Public Prosecutor, High Court of A.P.*, (2006) 11 SCC 239; *State of U.P v . Dinesh*, (2009) 11 SCC 566; *State of U.P v. Hari Chand*, (2009) 13 SCC 542; *Abdul Sayeed v. State of M.P.*, (2010) 10 SCC 259 and *Bhajan Singh @ Harbhajan Singh v. State*, (2011) 7 SCC 421]”.....(emphasis supplied)

The judgment does not support the complainant/prosecution. In that case, the medical evidence was found to be consistent with the ocular evidence and was held to corroborate the direct evidence proffered by the eye witness. There is no question of preferring the oral evidence to the medical evidence in the present case for more than one

⁹ 2016(4) R.C.R. (Criminal) 753

reason. The medical and the other evidence of the prosecution witnesses strongly militate against Renuka's evidence. Renuka's evidence cannot be accepted without corroboration. The corroboration could only be through the other witnesses. The evidence of the other witnesses does not corroborate her evidence. There is a delay of 382 days which is significant especially considered together with all the facts and circumstances of the case.

(135) We are afraid that in view of the above the accused cannot be convicted on the basis of Renuka's evidence. The learned Judge, therefore, rightly turned to the evidence of the other witnesses. In *Lallu Manjhi and another* versus *State of Jharkhand*¹⁰ the Supreme Court held:-

“10. The law of evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the court may classify the oral testimony into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon the testimony of a single witness. (See: *Vadivelu Thevar v. State of Madras* [AIR 1957 SC 614: 1957 Cri LJ 1000])”

Renuka would at best fall in category (iii). The court must, therefore, look for corroborative evidence which the learned Judge rightly did. We are, however, unable to accept his reasoning and appreciation of the evidence of the other witnesses. Their evidence if anything supports the defence.

(136) Mr. Bajaj relied upon the fact that Ram Kumar Kalyan knew the Director General of Police, Haryana. It is not necessary to refer to the evidence of the photographer in this regard. Ram Kumar Kalyan admits knowing him. That by itself does not indicate anything sinister. Mr. Bajaj has been unable to establish that the DGP interfered with the investigation in any manner. If there were lapses in the evidence, it was

¹⁰ 2003(1) RCR (Crl.) 566,

on all accounts including the failure to ascertain how Sramveer had obtained the weapon on the night of 22.04.2008. They did not even visit Ranbir Singh's residence to ascertain the same. They do not appear to have made any enquiries regarding the same despite being told that the weapon belonged not to Sramveer but to his father Ranbir Singh. The material on record does not indicate that the lapses in evidence were on account of any interference by the DGP on behalf of Ram Kumar Kalyan. We are unable to understand how such an allegation can be made by Ranbir Singh and Renuka Kalyan when, admittedly, neither of them informed the authorities that Renuka Kalyan had witnessed Ram Kumar Kalyan shooting Sramveer in the neck. Ranbir Singh is an experienced advocate and the father of Sramveer who allegedly was told by his daughter that Ram Kumar Kalyan had shot his son. He did not inform the police about the same. They in fact told the police authorities that it was a case of suicide. Their case regarding the affidavits and the documents and the statements to the police to the effect that Sramveer had committed suicide is that the same was on account of their having been misled by the advocate and pressurized by Ram Kumar Kalyan on account of the FIR. They do not allege that the police authorities or the Investigating Officers were responsible for the same. It is difficult to understand then how they could blame the Investigating Officers for the lapses in investigation during the 382 days of their silence in this regard.

(137)Mr. Bajaj's submission that flaws in the investigation must be attributed to the interference by the Director General of Police on account of his friendship with Ram Kumar Kalyan is not well founded. There are indeed flaws. There is, however, no evidence to indicate that the same was deliberate. Much less is there any evidence to indicate that the same were at the instance of the Director General of Police, Haryana. Infact certain discrepancies of the investigation have proved to the prejudice of the defence. Two examples are sufficient. We noted that for a period of two days there was no evidence as to where Ram Kumar Kalyan's clothes were and that there was a discrepancy in the colour of his pyjama. More important there was no investigation whatsoever regarding the manner in which Sramveer had obtained the pistol. Ranbir Singh contended that Sramveer broke open the almirah in his room i.e. in Ranbir Singh's room. Ranbir Singh invited a police officer to come and make a report about the same only a year later. It must be remembered that in the FIR No. 182 Ram Kumar Kalyan had alleged a conspiracy amongst the members of Ranbir Singh's family.

Despite the same there was not even an enquiry as to how the weapon was obtained by Sramveer although it did not belong to him. If the Director General of Police had interfered with the investigation he would surely have instructed the officers to investigate this aspect.

(138)Mr. Bajaj rightly did not raise any grievance to the effect that Sramveer, Nabheet and Renuka were, without any loss of time, taken to the Government Hospital, Karnal. He infact fairly and rightly stated that it is only due to the same that Renuka survived. It must be remembered that within half an hour of the incident Renuka was medically examined as is evident from the Medico Legal report (Ex.P9) dated 23.04.2008. He also conceded that at that time Ram Kumar Kalyan could not have known whether any of them were actually dead or still living.

(139)Ram Kumar Kalyan having immediately informed the police authorities about the incident is a factor in his favour. If he wanted Renuka dead he would not have called the police almost immediately.

(140)Mr. Bajaj, however, submitted that the other items in the room were disturbed or removed before the FSL team arrived. The items were there with the Investigating Officer.

(141)Mr. Bajaj submitted that Ram Kumar Kalyan must on 24.04.2008 have come to know that Renuka would survive the injury and that is why he commenced the process of negotiations. There is, however, no evidence to substantiate this contention. We are not inclined to draw such an inference on the basis of conjecture and speculation as we were invited to by Mr. Bajaj.

(142)Mr. Bajaj submitted that there was no cross examination regarding Renuka's description of the incident including the sequence of the firing and of the position of the people. This is incorrect.

(143)Renuka had been cross examined extensively as were the other independent witnesses. She was for instance shown the contradiction between a statement Ex.P20 and her allegations in the complaint filed a year later. It was suggested to her that what was stated in her affidavit dated 26.05.2008 was the correct version of the incident and that she had executed the affidavit after going through the contents and admitting the same to be true in the presence of her cousin Randeep Chauhan, an Advocate, who identified her signatures. In the affidavit dated 26.05.2008 she has stated that Sramveer had committed suicide. It was, therefore, clearly put to her that Sramveer had committed

suicide and it was not a case of homicide. She was cross examined further regarding the affidavit dated 26.05.2008. Her statement was to the police on 30.03.2009 i.e. almost a year after the incident. During that statement she had prepared a rough sketch of the scene of crime which is annexed to her statement. It must be remembered that it is the prosecution witness who produced the sketch that was relied upon by Mr.Narula. Although that sketch may have been as per Ram Kumar Kalyan's version, the prosecution, Renuka and Ranbir Singh did not controvert the same. They produced it in their evidence. It can hardly be suggested then that the defence cannot rely upon the statement. There is extensive cross examination regarding the incident a part of which we quoted earlier.

(144)Mr. Bajaj contended that the pistol and the cartridges had been removed before the arrival of the F.S.L. team. We will presume, however, that PW23 has alleged this. However, the same was not put to DW4. It would be dangerous to presume the same in the absence of evidence to this effect having been led. The evidence of PW23 does not establish that DW4 had removed the pistol and cartridges before the FSL team arrived. The FSL team reached the scene of crime at 1.00 P.M. alongwith DW4. In any event as we mentioned earlier, any flaw in the investigation cannot be attributed to the accused.

(145)We have also discussed the issue to the effect that it is not established as to whose blood was actually present on the clothes of both Sramveer and Ram Kumar Kalyan.

(146)The conviction of the appellants cannot be sustained.

(147)It is also not necessary to consider whether in an appeal to the High Court or otherwise, it is open in a criminal case to plead the alternative defence of grave and sudden provocation. The grave and sudden provocation would presumably be on account of Ram Kumar Kalyan having witnessed his son being killed by Sramveer and therefore in a fit of rage having picked up the pistol and shot Sramveer. It is not necessary to consider this aspect as we have held that the case against Ram Kumar Kalyan and Om Lata Kalyan under sections 302 and 307 of the Indian Penal Code has not been established.

Criminal Appeal-AD-12 of 2015

(148)This brings us to Criminal Appeal-AD-12 of 2015 against the common order and judgment in so far as it acquits Ram Kumar Kalyan for the offence under section 307 of the IPC and Om Lata

Kalyan of the charge under sections 302 and 307 read with section 34 of the IPC. What we have said so far in Criminal Appeal No.922-DB of 2014 against conviction also establishes that there is no case against Ram Kumar Kalyan for the attempt to murder of Renuka. We have also discussed the aspect regarding both the injuries on Renuka being on account of deflected bullets. We quoted paragraph-60 of the judgment in which the learned Judge rightly came to the conclusion that from the evidence of PW 23 Dr.R.K.Kaushal, who is a ballistic expert it is clear that there was a possibility that the bullet on Renuka's jaw was after being deflected from a hard surface such as a wall. The report Ex.P42 shows that there was a bullet hit mark on the wall. It is difficult then to accept Renuka's version of Ram Kumar Kalyan having fired at her.

(149)This brings us to the charge against Om Lata Kalyan. She is alleged to have persuaded Ram Kumar Kalyan to kill Sramveer and Renuka. The learned Judge held:-

“61. Now coming to role of Om Lata, she is alleged to have exhorted to kill Sharamveer and Renuka. However, apart from and testimony of PW11, there is no evidence on record to show that at any time, she shared common intention with Ram Kumar to kill Sharamveer and to fire at Renuka. Moreover, this version of complainant has come on record after a long gap of 382 days. There is a general tendency to over implicate more and more persons. Her version regarding firing at her by Ram Kumar, as discussed above is not believable. It seems that in order to falsely implicate accused Om Lata, Renuka has given a false and concocted version. In view of above discussion, I am of the considered opinion that prosecution has failed to prove its case against Om Lata.”

(150)We agree with the observations of the learned Judge in so far as they relate to Om Lata Kalyan. The observation that the version of the complainant had come on record after a long gap of 382 days, however, ought to apply in respect of the allegations against Ram Kumar Kalyan as well.

(151)Mr. Bajaj rightly admitted that there is no other evidence against Om Lata Kalyan. He, however, submitted that her guilt must be presumed on account of her having had a motive to kill Renuka. The motive according to him was to grab a share in her son Nabheet's estate.

(152)The submission we are constrained to say is totally unfounded and baseless. It was never anybody's case that either Ram Kumar Kalyan or Om Lata Kalyan planned to kill Sramveer or Renuka. Their case always has been that it was only at the spur of the moment after Sramveer shot Nabheet that Ram Kumar Kalyan fired the pistol on Sramveer's neck. Thus till that point of time even according to the prosecution there was no intention to kill Sramveer. Mr. Bajaj invites us to hold that during those few seconds Om Lata Kalyan suddenly thought of having Renuka killed so that she could inherit a part of Nabheet's estate. Even according to the prosecution at that stage there was no will for they contend that the will was forged subsequently. If that is so then obviously Ram Kumar Kalyan and Om Lata Kalyan did not know about the will at the time of the incident. We are, therefore, invited to hold that Om Lata Kalyan during those few seconds and at the highest during those few minutes thought of the provisions of the law of intestacy and then exhorted her husband Ram Kumar Kalyan to kill Renuka. During the hearing, the learned counsel were themselves trying to recollect the law of intestacy and we are expected to believe that Om Lata did the same while her son and her daughter-in-law's brother were lying dead on the ground. It probably missed the learned counsel that on intestacy Om Lala being the mother of Nabheet in any event would have inherited an equal share in Nabheet's estate being a class-I heir vide section 8 of the Hindu Succession Act.

(153)We heard these appeals alongwith other appeals over several days. Almost at the end of the hearing on 11.01.2017 Mr.Bajaj submitted an application under section 319 of the Code of Criminal Procedure for additional evidence. We disposed of that application by the following order dated 11.01.2017:-

“By consent of the parties, the application is ordered to be fixed today. Registry to assign number to the application.

Notice in CRM.

Mr. S.S.Narula, Advocate, accepts notice on behalf of the non-applicant/appellant. Heard.

After the main appeal has been heard for several days, this application under section 391 Cr.P.C. has been moved today on behalf of respondent No.2 for additional evidence. Three documents are relied upon, namely, an order dated 11.02.2012 passed by the Judicial Magistrate Ist Class,

Karnal, in Criminal Complaint No.19 of 2011; an order dated 05.09.2014 passed by the learned Single Judge of this Court in CR No. 2946 of 2011 and a report of the Special Investigating Team dated 21.11.2014 pursuant to the order dated 18.04.2012 in CWP No. 1100 of 2011.

The appellant has no objection to the reliance upon the orders of the Court being referred to in the course of the arguments.

Mr. Bajaj states that the SIT report is being referred to only to contend that the SIT was of the view that the entire investigation in this case had not been properly carried out. He has clarified that the SIT report is not relied upon for the purpose of supporting the order of conviction.

Mr. Narula has no objection to the SIT report being considered on this basis alone.

The documents are permitted to be taken on record subject to all just exceptions.

The application is accordingly disposed of.”

(154)It is also not necessary to consider whether in an appeal to the High Court or otherwise, it is open in a criminal case to plead the alternative defence of grave and sudden provocation. The grave and sudden provocation would presumably be on account of Ram Kumar Kalyan having witnessed his son being killed by Sramveer and therefore in a fit of range having picked up the pistol and shot Sramveer. It is not necessary to consider this aspect as we have held that the case against Ram Kumar Kalyan and Om Lata Kalyan under sections 302 and 307 of the Indian Penal Code has not been established.

(155)In the circumstances:-

- (1) Criminal Appeal No. 922-DB of 2014 is allowed.
- (2) The judgment and order of conviction and sentence of Ram Kumar Kalyan dated 09.05.2014/12.05.2014 in Sessions Case No. 838 of 2013 decided by Mr. Ajay Kumar Sharda, learned Additional Sessions Judge, Karnal is set-aside and the appellant is acquitted of the charges for which he is convicted by the trial Court.
- (3) The appellant Ram Kumar Kalyan shall be released

forthwith if not required in any other crime.

(4) The fine if paid be refunded.

(5) Criminal Appeal-AD-12 of 2015 is dismissed.

Sanjeev Sharma, Editor