

Delhi District Court

State vs . Sunil Kumar & Ors. on 16 July, 2014

Author: Ms. Sugandha Aggarwal

IN THE COURT OF MS. SUGANDHA AGGARWAL:

CHIEF METROPOLITAN MAGISTRATE (WEST) :

DELHI.

State Vs. Sunil Kumar & Ors.
FIR No. 60/1999
PS : Punjabi Bagh
Unique case ID No. 02401R0181122000
J U D G M E N T

(a) Sr. No. of the case 821/2

(b) Date of offence 7.11.1994

(c) Complainant Mr. Rajesh Kumar.

(d) Accused 1. Sunil Kumar, S/o Mohan Lal, R/o F-528, J.J. Colony, Madipur, Delhi.

2. Mahesh Khanna, S/o Arjun Dev Khanna, R/o H.No.154B, Savitri Nagar, New Delhi.

3. Desh Raj, S/o Mool Chand, R/o F-505, J.J. Colony, Madipur, Delhi.

(e) Offence	Under Sections 467/471/454/420/ 380/120B IPC
(f) Plea of accused	Pleaded not guilty.
(g) Final Order	Acquitted
(h) Date of institution	23.2.2000
(i) Date when judgment was reserved	04.07.2014.
(j) Date of judgment	16.07.2014

1. This judgment shall dispose off the case filed for offences under Sections 467, 471, 454, 420, 380 read with Section 120B of Indian Penal Code against the accused persons.

2. The allegations as per the charge sheet are that while the complainant Rajesh Kumar was running in judicial custody in some other case as an accused, the accused herein i.e. accused Sunil Kumar in criminal conspiracy with co-accused Mahesh Khanna and Deshraj has prepared false and fabricated General Power of Attorney, Agreement to Sell, Affidavit and Receipt purported to be executed by one Bindeshwar i.e. father of complainant who was owner of property bearing No. 485, J.J. Colony, Madipur, Delhi with respect to the said property. As per case of prosecution, after executing the said forged documents, accused Sunil Kumar trespassed and took the possession of said house and removed the articles of complainant lying in the said house without his consent and

without his knowledge. Hence, present case.

3. After completion of investigation, charge sheet was filed. Accused persons were supplied with copies in compliance of Section 207 Code of Criminal Procedure, 1973.

4. Charges for offences under Section 467, 471, 454, 420, 380 read with Section 120B of Indian Penal Code was framed against all the three accused persons to which they pleaded not guilty and claimed trial.

5. In order to prove its case, prosecution examined 22 witnesses. PW1 Bal Kishan Gupta has deposed on oath that Shri Bindeshwar, father of complainant was working as Account Manager with Bata India Ltd. He identified the correctness of documents and signatures of Bindeshwar on the said documents which were obtained by the IO from Bata India Ltd. as admitted signatures for sending the same to FSL. PW1 was not cross examined despite opportunity and discharged.

6. PW2 (mentioned as PW1) ASI Urmil identified the copy of FIR as Ex.PW1/A and her endorsement on the rukka as Ex.PW1/B. PW2 was not cross examined despite opportunity and discharged.

7. PW3 Mr. Pramod Kharbanda has deposed that he was having a shop of typing and preparing property documents. In the year 1999, one of his employee namely Raju @ Mahesh Khanna got one person who wanted to get prepared property documents of back date but PW3 refused to do the same. Accused Mahesh Khanna was correctly identified by PW3. PW3 was cross examined by Ld. APP and all accused persons except accused Mahesh Khanna who did not cross examine PW3 despite opportunity. Thereafter, PW3 was discharged.

8. PW4 Umrao Singh and PW9 Smt.Prem have ascertained the fact that House No.F485, J.J. Colony, Madipur, Delhi was occupied by Mr.Bindeshwar who subsequently left the said house and accused Sunil Kumar has taken over the possession of the said house. PW9 further deposed that she was given one Television by accused Sunil Kumar stating the same to be belonging to him. The said TV was seized by the police vide seizure memo Ex.PW9/B and she correctly identified the said TV as Ex.P1. PW4 was not cross examined by any of the accused persons despite opportunity and discharged. PW9 was cross examined by Ld. APP, accused Sunil and Deshraj and discharged.

9. PW5 Rajesh Kumar who is the complainant has deposed that his father Bindeshwar died in the Village while he was in custody. PW5 further deposed that during the period when he was lodged in Tihar Jail, he came to know through his friend that his House No. F485, J.J. Colony, Madipur, Delhi has been grabbed by accused Sunil Kumar on which he lodged the complaint. Further PW5 has identified the admitted signatures of his father Bindeshwar as correct and further stated that the signatures of his father Bindeshwar on General Power of Attorney Ex.PW1/G, Affidavit Ex.PW1/H, Agreement to Sell Ex.PW1/I and receipt Ex.PW1/J are not genuine. PW5 further deposed that there were several household articles lying in the said house and he identified one TV and one fan of Khaitan Company when the Test Identification Proceedings of case property was conducted during investigation. PW5 correctly identified accused Mahesh Khanna and Sunil Kumar. PW5 was cross

examined by all accused persons except accused Sunil Kumar and discharged.

10.PW6 Manohar Lal, Clerk from Office of DUSIB has brought the record ascertaining the fact that the house in question was originally allotted to Mr. Bindeshwar. PW6 was cross-examined by all accused persons except accused Sunil Kumar and discharged.

11. PW7 Praveen Sharma has not supported the case of the prosecution. He has deposed that though he knows accused Mahesh Khanna but accused Mahesh Khanna never approached him or his father for obtaining stamp papers and get them attested in back date. PW7 was cross-examined by Ld. APP, not cross-examined by accused persons and discharged.

12.PW10 Ms.Deepa Verma, Assistant Director (Documents), FSL, Rohini identified the FSL reports as Ex.PW10/A and Ex.PW10/B. PW10 was cross-examined and discharged.

13.PW15 Mr. Raj Kishore, Ahlmad in the Court of Sh. Pawan Kumar Jain, Ld. ASJ, Delhi has identified the complaints as Ex.PW15/A to Ex.PW15/E which were lodged by complainant Rajesh Kumar while facing trial of a murder case in the said Court. PW15 was not cross-examined despite opportunity and discharged.

14. PW19 Suraj Bhan, Pradhan of Village Beohain identified the Certificate Ex.PW19/A issued by him certifying that Mr.Bindeshwar had died in the said Village. PW19 was cross-examined and discharged.

15.PW20 Smt. Vidhya Malik, Notary Public deposed that the GPA Ex.PW1/G, Agreement to Sell Ex.PW1/I and Receipt Ex.PW1/J does not bear her signatures and seals. She further deposed that the signatures and seals purporting to be her signatures and seal appearing on the said documents are forged and fabricated. PW20 was cross-examined by accused Sunil and Deshraj, not cross-examined by accused Mahesh Khanna despite opportunity and then discharged.

16.PW11 ASI Sunder Singh, PW12 Retd. SI Ram Kishan, PW13 Retd. SI Virender Singh, PW14 ASI Ram Chander, PW16 Ct. Ram Niwas, PW17 Ct. Raj Kumar, PW18 SI Suresh Kumar, PW21 Ct. Ashokan and PW22 SI Ramzan Ali have deposed that they have participated in the investigation of the present case. They have deposed about the investigation done on the complaints lodged by complainant Rajesh Kumar, interrogation of all accused persons, their arrest and regarding their disclosure statement. All these witnesses were cross-examined and discharged.

17. After closure of prosecution evidence, statement of accused persons was recorded under Section 313 of Code of Criminal Procedure, 1973. Entire incriminating evidence was put to accused persons who denied all the allegations and stated that they are innocent and have been falsely implicated in this case. Accused persons opted not to lead any evidence in their defence.

18.I have heard the arguments raised by Ld. Counsels for all the parties.

19.Ld. APP for State has argued that by the testimony of complainant and expert witness, the offences charged against all the accused persons have been duly proved beyond reasonable doubt.

20.Complainant has also filed written arguments wherein he has reiterated and reasserted the facts of the case. He has further stated in his written arguments that the FSL report clearly proves that his father's signatures were forged on the GPA, Agreement to Sell and Affidavit etc and therefore the guilt of accused persons is proved beyond reasonable doubt.

21. Accused Mahesh Khanna has also filed written arguments stating that he was never aware that any forgery has taken place. Some other persons have impersonated as Mahesh Khanna and he was never involved in the present transaction. It is further stated that even the FSL report has stated that the handwriting of accused Mahesh Khanna does not match.

22.Mr. A.K. Jha, LAC for accused Deshraj has argued that all the property documents are executed only in favour of accused Sunil Kumar. Accused Deshraj has neither prepared any forged document nor was he aware about any such transaction. It is contended that police has taken his signatures on blank papers.

23.I have considered the rival contentions of all the parties and have carefully perused the record.

CASE AGAINST ACCUSED SUNIL KUMAR.

24.In order to prove the guilt of accused Sunil Kumar, the prosecution had to prove that accused Sunil Kumar has forged the General Power of Attorney, Agreement to Sell, Affidavit and Receipt Ex.PW1/G to Ex.PW1/J respectively with criminal intent and has subsequently trespassed into House No. F-485, J.J. Colony, Madipur, Delhi. As Shri Bindeshwar has already expired, therefore, his admitted signatures were collected from his employer M/s Bata India Ltd. The correctness of the admitted signatures have been established by PW1 Bal Kishan Gupta. Subsequently the said admitted signatures alongwith questioned signatures on the aforesaid General Power of Attorney, Agreement to Sell, Affidavit and Receipt Ex.PW1/G to Ex.PW1/J respectively were sent to FSL and the reports of FSL Ex.PW10/A and Ex.PW10/B has been duly proved by the testimony of PW10 Ms.Deepa Verma. As per FSL report Ex.PW10/A, signatures of Bindeshwar on the documents Ex.PW1/G to Ex.PW1/J are false and have been forged. Further PW5 Rajesh Kumar who is the complainant and son of Bindeshwar has also categorically deposed in his examination in chief that the signatures of his father on documents Ex.PW1/G to Ex.PW1/J are incorrect and forged one. Hence the fact that signatures of Executant Bindeshwar on the said documents are forged have been duly proved by the prosecution.

25. Now in order to hold accused Sunil Kumar guilty for the same, prosecution had to prove that it was accused Sunil Kumar who has forged the signatures on the documents in question. Definition of forgery has been given in Section 463 of Indian Penal Code wherein it is stated that any person who makes any false document with a dishonest intention for causing wrongful gain to himself and wrongful loss to some other person and with an intent to commit fraud is said to have committed forgery. The term making a false document has been defined in Section 464 of Indian Penal Code

which is reproduced hereinbelow: □ "Section 464. Making a false document □ A person is said to make a false document or false electronic record-- First--Who dishonestly or fraudulently--

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature, with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration."

26. Hence from the combined reading of both Sections 463 and 464 of Indian Penal Code, it is clear that a person is said to have committed forgery when he has prepared the false document by any of the means enumerated in Section 464 of Indian Penal Code. The scope of definition of forgery was also discussed by the Hon'ble Supreme Court in the case of Ram Narain Popli vs Central Bureau of Investigation Appeal (Crl.) No. 1097 of 1999 decided on 14.1.2003 as under : □ "The expression 'intent to defraud' implies conduct coupled with intention to deceive or thereby to cause injury. In other words, defraud involves two conceptions namely, the deceit and injury to the person deceived, that is infringement of some legal right possessed by him but not necessarily deprivation of property. The term 'forgery' as used in the statute is used in its ordinary and popular acceptance.

The definition of the offence of forgery declares the offence to be completed when a false document or false part of a document is made with specified intention. The questions are (i) is the document false (ii) is it made by the accused and (iii) is it made with an intent to defraud. If at all the questions are answered in the affirmative, the accused is guilty. In order to constitute an offence of forgery the documents must be made dishonestly or fraudulently. But dishonest or fraudulent are not tautological. Fraudulent does not imply the deprivation of property or an element of injury. In order to be fraudulent, there must be some advantage on the one side with a corresponding loss on the other. Every forgery postulates a false document either in whole or in part, however, small.

The intent to commit forgery involves an intent to cause injury. A person makes a false document who dishonestly or fraudulently signs with an intent or cause to believe that the document was signed by a person whom he knows it was not signed.

A false description makes a document of forgery when it is found that the accused by giving such false description intended to make out or wanted it to believe that it was not he that was executing the document but another person."

27. Now in the facts of the present case, though prosecution has proved that signatures of Executant Bindeshwar are forged but the prosecution has miserably failed to prove that the said false signatures were appended on the documents by accused Sunil Kumar. The said signatures alongwith admitted signatures of accused Sunil Kumar were sent to FSL for examination. Report in this regard has been identified by PW10 as Ex.PW10/B. It has been stated in the said report that no definite opinion can be given on the said enquiry. Hence from the FSL report, it cannot be ascertained that it was accused Sunil Kumar who has appended the said signatures. Further there is no witness to the fact that it was accused Sunil Kumar who has prepared the false documents. There can be a possibility that some other person impersonated himself as Bindeshwar and accused Sunil Kumar being a bonafide purchaser under the belief that the Executant is Bindeshwar himself. In a criminal case, the onus is on the prosecution to prove its case beyond reasonable doubt. Preparation of false document by the accused himself is an essential ingredient for the offence of forgery which has not been proved beyond reasonable doubt in the present case. Even the prosecution witnesses have not supported the version of the prosecution which further casts a shadow of doubt on the case of prosecution.

28.As per the case of prosecution, accused Mahesh Khanna has procured back date stamp papers from stamp vendor Ramesh Kumar. The said Ramesh Kumar has been examined as PW8 who has categorically stated that he knows accused Mahesh Khanna as they both are working as stamp vendors at the same place but accused Mahesh Khanna has never asked from him for stamp papers in back date. Ld. APP cross-examined the said witness but during that also, the witness maintained the said stand. Hence in these circumstances, the prosecution has failed to prove beyond reasonable doubt that it was accused Sunil Kumar who has forged and prepared the false documents in question. For the same reasons, it cannot be ascertained and cannot be proved beyond reasonable doubt that accused Sunil Kumar with a dishonest intention has forged documents and while using the said documents was having the knowledge that the said documents are forged one. Even the attestation of the documents in question has not been proved by the prosecution. As per the case of prosecution itself, accused Sunil Kumar in connivance with other co-accused got the said documents notary attested and in this regard PW7 Praveen Sharma who despite being cross-examined by Ld. APP has maintained his stand that he does not know either of the accused i.e. accused Sunil Kumar or accused Mahesh Khanna and

neither of the said accused persons approached his father to get any documents attested in back date.

29.Hence, in view of above discussion, the prosecution has also failed to prove the offences punishable under Sections 467 and 420 of Indian Penal Code.

30.Further accused Sunil Kumar is also charged for criminal house trespass under Section 454 of Indian Penal Code and for committing theft in dwelling house under Section 380 of Indian Penal Code. As per the case of prosecution, accused Sunil Kumar has entered House No. 485, J.J. Colony, Madipur, Delhi belonging to the complainant and thereafter removed his articles from the said house. The fact that initially the said house was in possession of father of complainant who was the original allottee of the said house has been duly proved by the testimony of PW5, PW6 and PW9.

31. Further PW9 has also stated on oath that after sometime when Bindeshwar left for his village, accused Sunil Kumar started residing in his house. Hence the fact that accused Sunil Kumar has been in possession of House No. 485, J.J. Colony, Madipur, Delhi has been duly proved. But mere possession of the said house will not attract the offence under Section 454 of Indian Penal Code. Section 454 of Indian Penal Code punishes the offence of lurking house trespass which has been defined in Section 442 of Indian Penal Code. As per the provisions of Section 442 of Indian Penal Code whoever commits criminal trespass in any dwelling house, tent or vessel used as a human dwelling is said to have committed house trespass. As per the provisions of Section 441 of Indian Penal Code, whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property is said to have committed criminal trespass. Hence in the present case, in order to prove the guilt, prosecution has to prove that accused Sunil Kumar has entered the house belonging to the complainant with intent to commit an offence or annoy the complainant.

32.Firstly, admittedly at the relevant time, complainant was running in judicial custody and was not in possession of said house. Further, in view of above discussion, it has not been proved beyond reasonable doubt that General Power of Attorney Ex.PW1/G, Affidavit Ex.PW1/H, Agreement to Sell Ex.PW1/I and receipt Ex.PW1/J were forged by accused Sunil Kumar. Hence it cannot be said that accused Sunil Kumar has entered the house with criminal intent. It might be that accused Sunil Kumar with bonafide belief of being entitled to possession of House No. 485, J.J. Colony, Madipur, Delhi has entered the said house. Hence I give benefit of doubt to accused Sunil Kumar for offence under Section 454 of Indian Penal Code.

33.As per the case of prosecution, accused Sunil Kumar has removed the household articles belonging to complainant lying in House No. 485, J.J. Colony, Madipur, Delhi. PW5 Rajesh Kumar who was complainant in this case has deposed that his

house was consisting of one Diwan, one Sofa, two chairs, one TV of Beltak, one ceiling fan of khaitan, one table fan, one gas stove, cylinder, one bicycle, two briefcases etc. All the household articles have not been recovered. As per the investigation carried out, it has been proved by the testimony of PW22 SI Ramzan Ali that one ceiling fan and one Television were recovered at the instance of accused Sunil Kumar which were seized by the Investigating Officer of the present case vide seizure memo Ex.PW18/A. It is also stated that the said television was recovered from the house of one Smt.Prem who is friend of accused Sunil Kumar. The said Smt.Prem has been examined as PW9 who has deposed on oath that the television in question was given to her by accused Sunil Kumar. However, it is stated by PW9 that accused Sunil Kumar has given her the said television stating the same to be belonging to him. The said television has been produced in the Court and has been duly identified by the witness. PW5 has also stated that he has also identified one television during the Test Identification Parade of case property. However, from the record it cannot be ascertained that the television which was recovered at the instance of accused Sunil Kumar and the television which was shown to PW5 during TIP and the television which was produced in the Court were the same. As per the examination in chief of PW5, there is no observation that a particular television has been produced in the Court which has been identified by the witness. Only one line is written that "case property Ex.P1 and Ex.P2 are produced by MHC (M)". What is the said property and whether the witness has identified the same to be the case property which he identified during TIP has not come in his testimony recorded on 8.12.2011. Further in the cross examination, PW18 has admitted that at the time of seizure, no photographs of the said TV and Fan were taken. Neither the Investigating Officer has put any identity mark on the said articles. Hence it cannot be said beyond reasonable doubt that the case property which was recovered at the instance of accused Sunil Kumar have been produced in the Court. Even for the documents, PW3 has stated in his testimony that the set of documents, shown to him in the police station were different from the other set of documents shown to him from the judicial record. Hence from this conduct during investigation, it becomes very suspicious to say that the property produced in the Court and the one seized in the case were the same. Further it cannot be ascertained that the property which was shown to PW5 during TIP was the same which has been produced in the Court. The Television which was seized from the house of PW9 Smt.Prem is stated to have been belonging to accused Sunil Kumar. There is no other evidence on record to link accused Sunil Kumar with the case property which has been identified by PW5 as belonging to him during TIP. Furthermore, as discussed above, the prosecution has failed to prove that accused Sunil Kumar had entered the property in question with any dishonest intention and has removed the articles of the complainant. Therefore it cannot be said that mens rea which was essential to commit theft was present. Hence there is no material on record to hold accused Sunil guilty for offence under Section 441 and 380 of Indian Penal Code.

CASE AGAINST ACCUSED MAHESH KHANNA

34. Though accused Mahesh Khanna has been charged for committing offences under Sections 467, 471, 420, 454, 380 read with Section 120B of Indian Penal Code but as per the case of prosecution itself, accused Mahesh Khanna was never in possession of House No. 485, J.J. Colony, Madipur, Delhi and has never removed the articles belonging to complainant from the said house. The role attributed to accused Mahesh Khanna is only that he has typed or got typed the property documents i.e. General Power of Attorney, Affidavit, Receipt etc. in back date in pursuance of the criminal conspiracy with other co-accused persons with an intention to prepare false documents. In order to prove the guilt of accused Mahesh Khanna, prosecution has examined PW3 Pramod. PW3 in his examination in chief has initially stated that one person came to him through one of his employee to get property documents prepared in back date and it was only when PW3 was cross-examined by Ld. APP that PW3 stated that the said employee was Raju @ Mahesh Khanna. Though PW3 has correctly identified accused Mahesh Khanna as the said employee namely Raju but besides this there is no other incriminating evidence which has come in the testimony of PW3 against accused Mahesh Khanna. As per PW3, accused Mahesh Khanna was accompanied by some other person who told him to prepare documents in back date but it was not accused Sunil Kumar. The only role attributed to accused Sunil Kumar by PW3 is that he found accused Sunil Kumar roaming under his shop several times. The mere fact that accused Sunil Kumar was roaming near the shop of PW3 does not itself leads to the conclusion that it was accused Sunil Kumar who in conspiracy with accused Mahesh Khanna has got prepared the forged property documents. Furthermore, there are following contradictions in the testimony of PW3 which renders the testimony of PW3 uncreditworthy.

(a) As per testimony of PW3, on 22.4.1999 police came to his shop for investigation of the present case. However, when PW3 was cross-examined by accused Sunil Kumar and Deshraj, he admitted the correctness of the suggestion that between 20.4.1999 and 25.4.1999, police has never inquired or visited him in respect of the present case.

(b) As per the testimony of PW3, 8-9 months back from 1999, one person visited him to prepare property documents in back date which amounts to say that the said person visited him in 1998 or 1999. Further PW3 stated that the said person wanted back date papers for 4-5 years, so as to say in 1993-94. However, the original General Power of Attorney, Agreement to Sell, Receipt, Affidavit which are placed on the record shows that though the Notary attestation date is of 1994 but accused Sunil Kumar has appended his signatures on the same on 4.12.1998. Hence it is impossible to accept the version of PW3.

(c) PW3 has deposed that he has identified the documents which were shown to him by the police during investigation as being typed from the typewriter at his shop. It is also stated that some of his employee used to get the papers typed from the typewriter at his shop. However, PW3 has categorically denied and has failed to identify the GPA, Agreement to Sell, Affidavit and Receipt which are on the judicial record as the same documents which were shown to him by the police during investigation.

(d) PW5 complainant Rajesh Kumar has identified accused Mahesh Khanna in the Court. As per the case of prosecution, accused Mahesh Khanna has got the documents in question typed. As per the facts averred in the case, complainant was running in judicial custody when he made complaint and

when the said documents were prepared. Then when and what was the occasion when PW5 has seen accused Mahesh Khanna before the investigation of the present case and has been able to identify accused Mahesh Khanna as one of the guilty person in conspiracy has not been explained. In these circumstances, this Court fails to understand as to how accused Mahesh Khanna can be identified by complainant Rajesh Kumar.

(e) Furthermore, a typewriter was seized from PW3 alleging that it was the same typewriter which was used for typing the documents in question. The documents in question were sent to FSL for verification. All the said fact alongwith the admitted documents typed from the seized typewriter for which report was given which is Ex.PW10/B dated 28.10.1999. In the said report, the questioned typewriting was marked Q8 to Q31 and the specimen typewriting was marked S□63 to S□64 typed from Remington Typewriter No. 1J297461. As per conclusion of the said FSL report, no definite opinion can be given on the said ID and hence it cannot be proved by the prosecution beyond reasonable doubt that the documents which are placed on the judicial record purported to be prepared and typed by accused Mahesh Khanna and have been typed from the typewriter which was seized from the shop of PW3 Pramod Kharbanda.

35.From the above discussion, it is clear that the prosecution has failed to prove beyond reasonable doubt that accused Mahesh Khanna has typed the General Power of Attorney, Agreement to Sell, Receipt and Affidavit which are placed on record. In fact it has come in the testimony that the documents which have been placed in the judicial record were never put to witness PW3 by the police. Hence there is no evidence to hold accused Mahesh Khanna guilty for any of the offences for which he is charged. CASE AGAINST ACCUSED DESHRAJ

36. Accused Desh Raj has also been charged for committing offences under Sections 467, 471, 420, 454, 380 read with Section 120B of Indian Penal Code but as per the case of prosecution itself, accused Deshraj was never in possession of House No. 485, J.J. Colony, Madipur, Delhi and has never removed the articles belonging to complainant from the said house. The only role attributed to accused Deshraj is that he has appended his signatures as a witness on the documents in question. The fact that signatures appearing as witness are his correct signatures has been proved by FSL report Ex.PW10/A and the correctness of the said report has been proved by the testimony of PW10. However, as already discussed above merely by proving that accused Deshraj has appended his signatures as witness shall not prove that accused Deshraj was participating in the conspiracy for committing offences by preparing false documents. It was for the prosecution to prove beyond reasonable doubt that accused Deshraj despite being having the knowledge that the documents to be executed are forged documents appended his signatures as witness to the documents, for which there is no evidence on record. Hence no criminal intent can be attributed to accused Deshraj and accordingly he cannot be held guilty for all the offences charged against him. OFFENCE UNDER SECTION 120B IPC AGAINST ALL THREE ACCUSED PERSONS.

37. In view of above discussion, none of the offences are committed by the accused persons which is a sine qua non for holding the accused persons guilty for offence under Section 120B of Indian Penal Code. Therefore, all the accused persons are held to be not guilty for offence under Section 120B of Indian Penal Code.

38. In the backdrop of above discussion, I am of the opinion that the prosecution has miserably failed to prove its case against any of the accused persons. Accordingly, all the accused persons are acquitted.

39. Accused Sunil Kumar and Deshraj are running in judicial custody. They be released from custody, if not required in any other case.

40. Bail bonds of accused Mahesh Khanna which are already on record are extended for the purposes of Section 437A of Code of Criminal Procedure.

41. File be consigned to record room.

(Sugandha Aggarwal) Chief Metropolitan Magistrate (West) : Delhi Announced in open Court on 16th day of July, 2014.