

State vs Sidhartha Vashisht And Ors. on 18 December, 2006

Author: R.S. Sodhi

Bench: R.S. Sodhi, P.K. Bhasin

JUDGMENT

R.S. Sodhi, J.

Page 0009

1. Criminal Appeal No. 193 of 2006 challenges the judgment of the Additional Sessions Judge dated 21.2.2006 in Sessions Case No. 105 of 2001, arising out of FIR No. 287/99, Police Station, Mehrauli, whereby the learned Judge has acquitted the respondents of all charges framed against them.
2. Brief facts of the case, as have been noted down in the judgment under challenge by the Additional Sessions Judge, are as follows:

That on 29.4.1999 at Qutub Colonnade at ?Once upon a time? restaurant also called 'Tamarind Cafe' a Thursday party was going on. At Thursday party the liquor was being served by the bartenders, namely, Jessica Lal and Shyan Munshi. At about 2 a.m. Shyan Munshi was present at Tamarind Cafe situated at Qutub Colonnade five six persons including one waiter were also present there, one person aged 30-32 years came out from the back side of bar and asked for two drinks of liquor. The waiter did not serve him the liquor as the party was already over. Jessica Lal and Malini Ramani who were also present there also tried to make him understand that party was over and that there was no liquor available with them. On this that person took out a pistol and fired one shot at the roof and fired another shot at Jessica Lal which hit her near her left eye as a result of which she fell down. Jessica Lal was rushed to Ashlok hospital from where she was shifted to Apollo Hospital. On 30.4.99 in the early morning hours Jessica Lal was declared dead at Apollo Hospital.

Charge under Section 302/201/120B IPC and also under Section 27 Arms Act has been framed against accused Sidhartha Vashisht @ Mannu Sharma. Charge under Section 120B/201 IPC has been framed against accused Vikas Yadav, Amardeep Singh Gill @ Tony Gill and Alok Khanna. Charge under Section 212 IPC has been framed against the accused Harvinder Chopra, Raja Chopra, Vikas Gill @ Ruby Gill and Yograj Singh. Charge under Section 201/212 IPC has been framed against accused Shyam Sunder Sharma. Charges were framed and read over to the accused persons to which all the accused persons pleaded not guilty and claimed trial.

3. Before the learned Additional Sessions Judge, the Prosecution in order to support their case, examined as many as 101 witnesses. Of which, PW-1 Deepak Bhojwani, PW-2 Shyan Munshi, PW-3, Shiv Dass Yadav, PW-4 Karan Rajput, PW-5 Parikshat Sagar, PW-6, Malini Ramani, PW-7, Naveen Chopra, PW-9 Dr. R.K. Sharma, PW-10 Dr. Jasvinder Singh, PW-15 Sumitabh Bhatnagar, PW-19 Andleep Sehgal, PW-20, Beena Ramani, PW-21 ASI Madan Pal, PW-24, George Mailhot, PW-46 Madan Kumar, PW-63 Ram Avtar, PW-70 Rohit Bal, PW-79 Rajneesh Kumar Gupta, PW-99 Dr. Deepak Vats, PW-100 SI Sunil Kumar, CW-1 Dr. Rawel Singh and CW-2 HC Ram Page 0010 Dayal are the witnesses whose testimonies have been discussed while the remaining witnesses were formal in nature.

4. The learned Additional Sessions, upon appreciation of evidence on record, came to the conclusion that the Prosecution has been able to prove that accused Sidhartha Vashisht @ Manu Sharma was holding a licensed pistol of .22 bore and that he had purchased 25 rounds of cartridges from Haryana Gun House on 4.2.1999 and that the pistol used in the commission of the crime has not been recovered from Sidhartha Vashisht @ Manu Sharma. The learned Judge held that the Tata Safari car bearing registration No. CH-01-W-6535 was registered in the name of M/s Piccadilly Agro Industries Private Limited of which Sidhartha Vashisht @ Manu Sharma was one of the directors. The learned Judge also held that Amardeep Singh Gill and Alok Khanna were working in Hindustan Coca Cola Company at the relevant time and were allotted Tata Siera car each. He further held that Tata Siera car bearing registration No. HR-26-H-4348 was allotted to Amardeep Singh Gill. The learned Judge also held that Amardeep Singh Gill was given mobile phone No. 9811100237 while Alok Khanna was given mobile phone No. 9811068169 by the Hindustan Coca Cola Company. The Court also held that telephone No. 3782072 was installed at B.R. Mehta Lane which was the residence of Mr. D.P. Yadav, father of the accused, Vikas Yadav, and that telephone Nos. 4765152-53 were installed at the Sugar Mill owned by Piccadilly Agro Industries Private Limited of which Sidhartha Vashisht @ Manu Sharma, Shyam Sunder Sharma and Harvinder Chopra were directors at the relevant time. The Court returned a finding that Beena Ramani was the owner of the restaurant ?Once Upon a Time? and she was running a cafe named 'Tamarind Court Cafe' at Qutub Colonnade. The Court went on to return a finding that on 29.4.1999 i.e. the day of occurrence a private party was held at the restaurant 'Tamarind Court Cafe' which was a Thursday party held weekly and liquor was served. At that party, Jessica Lal was wearing a blue denim short and half sleeve white shirt. The Court also held that the accused, Sidhartha Vashisht @ Manu Sharma, along with co-accused Amardeep Singh Gill, Alok Khanna and Vikas Yadav, was present at the said party at Tamarind Court Cafe on the night of the occurrence when someone fired a shot at Jessica Lal as a result of which she received injury on her head. She was removed to Ashlok Hospital from where she was removed to Apollo Hospital and declared 'brought dead' by the doctor at 4.37 a.m. The Court further returned a finding that Jessica Lal was transferred from Apollo Hospital to All India Institute of Medical Sciences where postmortem was conducted by Dr. R.K. Sharma who opined that the cause of death was head injury caused by fire arm which was sufficient to cause death in the ordinary course of nature. The Additional Sessions Judge agreed with the Public Prosecutor that PW-2, Shyan Munshi, came running to PW-20, Beena Ramani, and told her that someone had fired a shot at Jessica Lal and Jessica Lal had received injuries in that firing. The learned Judge also returned a finding that Beena Ramani tried to stop one person named, Sidhartha Vashisht @ Manu Sharma, who was coming along with Shyan Munshi. She also told him to give her the gun. The

Court, relying upon the evidence of PW-1, Deepak Bhojwani, returned a finding that Sidhartha Vashisht @ Manu Sharma was Page 0011 seen at the party at Tamarind Court Cafe and that Manu Sharma had asked for two pegs of whisky from PW-1 who also saw the other co-accused persons joining Manu Sharma later on. This witness has identified Amardeep Singh Gill, Alok Khanna and Vikas Yadav which, according to the Court, proves that accused Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav were present at the Tamarind Court Cafe where the incidence took place.

5. The learned Additional Sessions Judge, however, did not agree that Tata Safari car bearing registration No. CH-01-W-6535 was used by the accused persons to come to Qutub Colonnade. The Court also held that mere use of telephones by the accused persons to contact each other before and after the incidence is of no consequence as the conversation was not placed on record. The Court also dismissed the conversation recorded between Ashok Dutt and Ravinder Sudan. The Court disagreed with the Public Prosecutor that there was any evidence on record to show that Harvinder Chopra, Yog Raj Singh and Shyam Sunder Sharma had, in any manner, given shelter to Manu Sharma after the incidence which may amount to harbouring of a criminal. The Court further disagreed with the Public Prosecutor that Sidhartha Vashisht @ Manu Sharma had absconded from the jurisdiction of the Police immediately after the commission of the crime.

6. Agreeing with the arguments of counsel for the accused, the Court held that PW-2, Shyan Munshi, PW-3 Shiv Dass Yadav and PW-4 Karan Rajput were not eye witnesses and had not seen the occurrence. Sidhartha Vashisht @ Manu Sharma had purchased 25 rounds of .22 bore against his license from PW-7, Naveen Chopra, and that those cartridges were marked 'KF' indicating the manufacture at Kirki Factory. None of these cartridges were used in the commission of crime. The Court held ? that the Police on 30.4.1999 had decided to frame the accused Sidhartha Vashisht in this case; that PW-30, Delhi Home Guard Sharwan Kumar, was not present on the spot on the night of the occurrence on 29/30.4.1999; that PW-101 Inspector Surender Kumar had introduced the story of broken pieces of glasses falsely; that there is no evidence on record to show that accused Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav had come in a black Tata Safari car to Qutub Colonnade on the night of 29/30.4.1999; that the Prosecution had failed to connect the mobile phone No. 9811096893 with the accused Sidhartha Vashisht @ Manu Sharma; that PW-1, Deepak Bhojwani had been introduced as a false witness; that the evidence of PW-6, Malini Ramani is of no help to the Prosecution as also the evidence of PW-20 Beena Ramani; that PW-24 George Mailhot was not present at the Tamarind Court Cafe at the time of the incident; that the Prosecution has failed to prove the conversation between PW-57 Ashok Dutt and Ravinder Sudan @ Titu; that the Prosecution has failed to prove its case beyond reasonable doubt; that no chance prints were lifted from the black Tata Safari car No. CH-01-W- 6535; that although the accused persons were present at the party on the fateful night of the occurrence, their mere presence is of no consequence; that the photographs of all the accused persons, namely, Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gill, Ashok Khanna and Vikas Yadav were shown to the witnesses Page 0012 before the accused were identified in Court; that there is no evidence against Shyam Sunder Sharma regarding involvement in destruction of evidence or harbouring of the accused persons; that no case is proved against Yog Raj Singh, Harvinder Chopra, Raja Chopra and Vikas Gill.

7. In view of the aforesaid findings, the trial court came to the conclusion that all the links in the chain of evidence produced by the Prosecution are either missing or broken. The Court went on to hold that the Prosecution had miserably failed to bring home the guilt of the accused and thereby acquitted them of all charges.

8. Challenging the correctness of the judgment under appeal, Shri Gopal Subramanium, learned Additional Solicitor General, argued that the judgment under challenge is self-destructive, contradictory and omits to appreciate the evidence on record as also a misread evidence. In support of his contention, learned Additional Solicitor General pointed out that the Court agrees with the Prosecution to the effect that Sidhartha Vashisht @ Manu Sharma was holder of a licensed pistol of .22 bore; that Tata Safari car No. CH-01-W-6535 was registered in the name of Piccadilly Agro Industries Pvt. Ltd., Chandigarh, of which accused Sidharth Vashisht was one of the directors; that Amardeep Singh Gill was allotted Tata Siera car bearing registration No. HR- 26-H-4348; that Amardeep Singh Gill was having mobile phone No. 981100237, Alok Khanna was having mobile phone No. 9811068169 given by Hindustan Coca Cola Company and that telephone No. 3782072 was installed at the residence of D.P. Yadav, father of Vikas Yadav, and that telephone Nos. 4765152-53 were installed at the Sugar Mill owned by Piccadilly Agro Industries Limited of which Sidhartha Vashisht @ Manu Sharma and Harvinder Chopra were directors at the relevant time; that Beena Ramani owned the restaurant ?Once Upon a Time? and she was running a caf? named ?Tamarind Court Caf?? at Qutub Colonnade at the relevant time and that on 29.4.1999 a private party was going on at the said restaurant which was a regular Thursday party when liquor was served in the restaurant; that the accused Sidhartha Vashisht @ Manu Sharma, along with the co-accused Amardeep Singh Gill, Alok Khanna and Vikas Yadav, was present at the said party at Tamarind Court Caf? on the night of the occurrence when someone fired a shot at Jessica Lal as a result of which she received injuries on the head. She was removed to Ashlok Hospital from where she was removed to Apollo Hospital and declared ?brought dead?. The body was transferred to All India Institute of Medical Sciences where postmortem was conducted by Dr. R.K. Sharma who opined that the cause of death was head injury caused by fire arm and it was sufficient to cause death in the ordinary course of nature; that PW-20, Beena Ramani, deposed that PW-2 Shyan Munshi, came running to her and told her that someone had fired a shot at Jessica Lal and she had received injuries in that firing; that PW-20 Beena Ramani had stated that she stopped one person, namely, Sidhartha Vashisht who was coming along with Shyan Munshi; that she told him to give her the gun; that Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav were seen at the spot of occurrence on the night of 29/30.4.1999. Learned Additional Page 0013 Solicitor General argued that the findings of the trial court against the Prosecution in paragraphs 241, 250, 251, 254, 277, 278, 280, 285, 292 and 295 in relation to the occurrence are incorrect and perverse. He relied upon the testimony of PW-1, Deepak Bhojwani, who states that Jessica Lal and Shyan Munshi were serving liquor on that night at the bar counter. I was moving around in the party with two glasses of whisky when I came across a person having fair complexion who was giving smile to me. I also reciprocated. He gave me his name as Manu Sharma. He said as to how I was holding two glasses of whisky in my hands whereas he was unable to get even one. Manu Sharma came into my contact after about 10-15 minutes of my purchasing two pegs of whisky. The witness goes on to say we were already introduced to each other and were about to exchange visiting cards when one tall Sikh gentleman came from behind of Manu Sharma and told him

something and took him away towards Tamarind Cafe.

9. Learned Additional Solicitor General argued that the Prosecution has been able to prove that Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav were present at the spot of incidence on the night of 29/30.4.1999, their identities having been fixed. There is evidence on record to show that Manu Sharma had a fire arm on his person and used the same to fire two shots, one in the air which went through the roof and the other that struck Jessica Lal. He submitted that the Prosecution has been able to prove that the findings of the trial court against the Prosecution are incorrect and perverse without basis of the evidence adduced on record. He submitted that the Prosecution has been able to show by positive evidence that Manu Sharma was the owner of and in possession of a .22 bore Beretta pistol made in Italy; that two empty cartridges cases of the .22 with ?C? mark were recovered from the spot; that the mutilated lead recovered from the skull of the deceased was of .22 and could have been fired from a standard .22 caliber firearm; that from the Tata Safari live cartridges of .22 with mark ?C? was recovered indicating that the fired cartridge and live one were of the similar make; that the two .22 cartridge cases of ?C? mark were lying near each other on the counter discarding the theory of 'that they were fired by two different people'. He submitted that the Prosecution has been able to show that the Expert opinion of Roop Singh is not admissible and cannot be used as evidence. It has also been able to show that the opinion of Prem Sagar Minocha given in Ex. PW-95/C-1 is inconclusive. His testimony in Court that destroys his opinion, Ex. PW-95/C-1, is baseless and cannot be relied upon. The Prosecution has been able to show that Manu Sharma came to Qutub Colonnade in a black Tata Safari car No. CH-01-W- 6535 which he abandoned while making a hasty escape after the shooting. In other words, the Prosecution has been able to bring home the guilt of the accused beyond shadow of doubt.

10. Learned Additional Solicitor General submitted that the basis of the judgment of acquittal is clearly erroneous, perverse and deserves to be set aside for reasons that the trial court wrongly proceeded on the basis that it was the story of the Prosecution that two shots were fired by two persons from two different pistols which was never the case of the Prosecution. Moreover, in the light of ocular testimony of PW-2, Beena Ramani, the Page 0014 ballistic expert, whose testimony is riddled with contradictions, cannot be used to override the ocular evidence. The Court erred in holding that all the three eye witnesses turned hostile and overlooked the fact that PW-1, PW-2, PW-6, PW-20, PW-24 and PW-70 were witnesses of different aspects of the incidence and that the evidence has to be read as a whole. The trial court grossly erred in the manner of appreciation of testimonies of the said witnesses by reading into the said testimony what was not there. The key witnesses? evidence which did not exist, for instance, while dealing with PW-20, the trial court arrived at a factually wrong finding, not borne out from the evidence on record, to the effect that she thought that he had fired a shot at Jessica Lal and that she was not an eye witness. The extent of perversity in the judgment is also reflected by a fallacious presumption drawn about the manner of investigation in paragraph 256 of the judgment. The findings are without any basis. Learned Additional Solicitor General submitted that from the testimony of the PW-101, Inspector Surender Sharma, it was revealed that when the said witness was informed by PW-30 about the Tata Safari having been taken away by force, he communicated the said information to his superiors in order to find out the ownership details about the Tata Safari car bearing Chandigarh registration number. In

reply, he was informed that the same was registered in the name of Piccadilly Agro Industries Pvt. Ltd. of which Manu Sharma was a director and the same was being used by him. The Court has erred in reading the said piece of evidence and thereby coming to a perverse finding. The trial court wrongly placed reliance on Ex. PW-24/A which is the guest list and disbelieved the testimony of the Prosecution witnesses PW-1, PW-24 and PW-30 as being planted witnesses. This guest list which was prepared by PW-24 was pressed into service even though the trial court returned a finding that PW-24 was not present at the scene of occurrence. In paragraph 278 of the judgment, the trial court justifies refusal of Test Identification Parade on a wrong premises that PW-6 had stated that photograph of Manu Sharma were shown to her parents. Similarly, at paragraph 279, the trial court wrongly finds that PW-20 had stated that she heard another shot being fired by someone in the restaurant. Also in paragraph 254 the trial court, in order to arrive at a finding that PW-2, Shyan Munshi, did not know Hindi, wrongly finds that PW-23, Rouble Dunglay, has deposed that Shyan Munshi did not know Hindi.

11. Learned Additional Solicitor General further went on to pick holes in the judgment by submitting that the trial court arrived at a finding that Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav were present at the scene of occurrence with the aid of PW-1, Deepak Bhojwani, whom he discards, as having been a planted witness. Nonetheless, having returned such a finding, the burden of proof shifted to the accused persons who flatly denied their presence at the scene of occurrence without even setting up a plea of alibi. He went on to submit that this is a case where a host of Prosecution witnesses turned hostile at the instance of the defense. It has got introduced false evidence into the case from the witnesses who have turned hostile and that the defense has even gone on to tamper with judicial record. The Court should have seen through the game of the defense rather than, Page 0015 with single stroke, paint the Prosecution as villain of having set up a false case against Manu Sharma.

12. Arguing on behalf of the accused, Sidhartha Vashisht @ Manu Sharma, Shri Ram Jethmalani, learned Senior Advocate, submitted that Manu Sharma was not present at the Qutub Colonade on 29/30.4.1999. He submitted that there is nothing to prove the presence of Manu Sharma at the spot of occurrence and that the witnesses PW-1, PW-5, PW-6 and PW-19 do not, in any manner, show that they knew the accused and their testimonies cannot be used by the Prosecution to take advantage to fix the presence of the accused at the spot of occurrence specially when PW-1 already stands stamped as a 'planted witness'. He submitted that PW-1, Deepak Bhojwani's statement is filled with improvements and contradictions besides the fact that his statement was recorded at a very late stage, the same does not inspire confidence and cannot be relied upon. PW-6, Malini Ramani, has been discussed by the trial court in paragraphs 278 and 292 of the judgment. The findings are justified from the material on record. In addition, he submitted that this witness fainted on hearing that Jessica Lal had been hit and cannot, therefore, be a witness of the occurrence. He also submitted that this witness along with her parents was under extreme Police pressure. She had been interrogated intensely for five days, the photographs were shown to her, the Police had made her to sign statements and put psychological pressure on her, as such was a pliable witness for the Prosecution but not a reliable witness for the Court. A false excise case was registered to keep the pressure alive during deposition which was subsequently got decided with a paltry fine. Counsel submitted that impermissible leading questions were put to this witness as regards identification

which cannot be used as evidence. In any event, this witness was too drunk since she had been drinking from the start up to the finish of the party. She can hardly be expected to remember anything of importance. There is no evidence to show the presence of Manu Sharma at Qutub Colonnade in the aforesaid party on the night of 29/30.4.1999. From the testimony of PW-2, Shyan Munshi, PW-3, Shiv Dass Yadav and PW-4, Karan Rajput, it is clear that nobody saw Manu Sharma at the place of incidence nor did anybody see Manu Sharma using fire arm to fire two shots let alone to fire the shot that killed Jessica Lal. None of these witnesses were eye witnesses to the occurrence but are witnesses of prior and subsequent events. PW-2, Shyan Munshi, clearly states that two different people fired from two different weapons. His statement made to the police which is stated to be the FIR was never dictated by him nor read over to him as it was in Hindi, a language not known to him. Counsel submitted that the statement of the witness sought to be used by the Prosecution to establish the guilt of the accused is hit by Section 162 Cr.P.C. since the witnesses were made to sign their statements. The evidentiary value, therefore, has been impaired considerably and cannot be used as pure evidence. Counsel submitted that an atmosphere of prejudicial hate had been created to implicate Manu Sharma while the actual culprits successfully managed to divert the investigation to a wrong direction and escaped. The theory of two persons having fired two bullets was deliberately abandoned by the Police itself. He submitted that the charge, as framed, is under Section 302 IPC, but when there is a possibility of two bullets being fired by two different persons, there is no certainty that the bullet that killed Jessica Lal was fired by Manu Sharma. He could not, therefore, be convicted under Section 302 IPC. He contended that Beena Ramani was not present in the party. This is evident from the site plan where Beena Ramani has not been shown. Relying upon PW-4, PW-6 and PW-47, counsel submitted that these Prosecution witnesses are not hostile. From their statements it is evident that Beena Ramani did not see the shooting. Counsel further went on to submit that the Prosecution has failed to prove that the fatal bullet was in possession of the accused, Manu Sharma, at 2.00 a.m. on 29/30.4.1999. The Prosecution has not been able to get rid of the fact that there were two persons who fired two bullets. Even otherwise, there is no proof that Manu Sharma fired the fatal bullet. The FIR based on the statement of Shyan Munshi cannot be treated as an FIR. His statement was got signed by the Police and is hit by Section 162(2) Cr.P.C. He submitted that the Police has manufactured evidence after investigation up to the date of trial. PW-1 had stated that he had told the Police that Manu Sharma was the killer but his statement was recorded on the 14.5.1999, the long delay is fatal. This witness has made 21 improvements. He is known to the deceased and has every reason to make a false statement. In any event, he was too drunk on the date of the occurrence to be a meaningful witness. There has been a dishonest attempt by the Prosecution to improve the case against Manu Sharma by introduction of PW-1 whose statement lacks independent corroboration. He fully supports the statement of PW-2, Shyan Munshi who, counsel submitted, cannot be relied upon by the Prosecution but the accused has every right to rely upon the same since it was not put to the accused in his statement under Section 313 Cr.P.C. that the motive attributed is inadequate and is of much higher intent and intensity. Shyan Munshi clearly states that two shots were fired by two different persons and there is no reason to disbelieve this witness who finds support from the ballistic evidence, Ex. PW-89/DA. Counsel also went on to submit that the Prosecution has been dishonest and unfair in trying to withhold evidence of the ballistic expert, Roop Singh, which had to be brought on record by the accused who made an application to that effect in the Court. Even the ballistic expert produced by the Prosecution has clearly stated that the two empties examined

appear to have been fired from two different fire arms. From the opinion of the expert and the statement of Shyan Munshi, it is not possible for this Court to go against the finding that two persons had fired two shots. According to the counsel, from the testimony of PW-23, Rouble Dunglay, it is clear that the whole story of non serving liquor being the motive of the crime is a concoction. Jessica Lal died not because she did not give what she did not have, but did not give what she had which had hurt the manhood of the assailant. The Prosecution must necessarily succeed as of late and cannot be allowed to create a new one. Counsel categorically stated that there is nothing on record to show that Manu Sharma fired a shot, there is evidence which discloses that two persons fired shot and one of them had fired a shot in the air. Nobody saw Page 0017 Manu Sharma firing the fatal shot. In any event, Manu Sharma was not there nor did he need a drink. Shyan Munshi is a reliable witness who states that Manu Sharma was not the one who fired a shot in the open.

13. Attacking PW-24, George Mailhot, counsel submitted that his statement is hit by Section 163 Cr.P.C. and Section 24 of the Indian Evidence Act. This witness saw a Sardar standing above the desert spot who was maintaining calm. It was this Sardar, according to counsel, who fired the fatal shot. He contended that the examination-in-chief of this witness was concluded on 18.10.2001 at which time the Prosecution ensured that in the excise case an application was moved for preponement. His supporting the Prosecution's case was the result of a package deal prepared between the Police and the Ramani family. In the excise case, he was allowed to plead guilty and let off with a small fine. This witness was under constant threat which is violative of Section 163 Cr.P.C. His testimony is seriously impaired. Analysing his statement, counsel submitted that taking away the omissions, the only part that is left is that Beena Ramani was following a boy. The improvements in the testimony have been made at the instance of the Prosecution. From the testimonies of PW-46, PW-47 and PW-86, it is evident that PW-24, George Mailhot, was not at the Qutub Colonnade at the time of the occurrence. The finding of the trial court that George Mailhot was not a witness, cannot be faulted with.

14. Further attacking PW-6 Malini Ramani, counsel submitted that her evidence, even if taken as it is, only establishes that Manu Sharma was at the spot. Her statement was recorded after undue delay. The party was over by midnight and at 1.45 a.m. she was still drinking and looking for more which implies that she was drunk and further she could not even identify any of the 40 persons who were demanding liquor. She had not even seen Shyan Munshi but only heard shots. This witness was too drunk or was busy doing whatever she was. Counsel went on to submit that the non-examination of Mehtani should be taken against the Prosecution as he was a material witness. The Qutub Colonnade was too crowded, identification in such a crowd is impossible that too by a person who hasfas drunk more than her share for that evening. He submitted that this witness has stated that her statement was recorded on three occasions and she was made to sign the statements which is hit by Section 163 Cr.P.C. The testimony of this witness is of no use to the Prosecution.

15. Mr. Jethmalani also attacked PW-20, Beena Ramani. He submitted that this witness was not present at the Tamarind Court Cafe and did not see anything . Even otherwise, he submitted that if the substantive evidence given in court is weak, it is useless. Identification in Court of the accused for the first time is useless unless the capacity to identify and actual identification of the culprit are

corroborated by a properly held Test Identification Parade. A Test Identification Parade which is rendered difficult is useless by reason of no misconduct of the accused but of the Agency and takes away the safeguards known to law and renders the substantive evidence useless. Even the Test Identification Parade is not enough, there must be something more to connect the accused with the Page 0018 crime. If the accused or the suspect has been physically shown either before the Court hearing or before the Test Identification Parade, the evidence of identification becomes useless. He submitted that the identification in Court is of no consequence, as has been held by the Supreme Court in Hari Nath and Anr. v. State of U.P., Budhsen and Anr. v. State of U.P. Even according to the Prosecution, this witness is not an eye witness, as has been stated by PW-100 and PW-101. According to the counsel, Beena Ramani does not prove that Manu Sharma shot the fatal shot at the deceased. Her statement regarding stopping a person is a concoction not because of malice or untruth but due to a compromise with truth. The truth of the incidence is given in the statements of PW-46 and PW-47 who say that Beena Ramani was with them till she took Jessica Lal to the hospital.

16. Counsel also submitted that there is a contradiction in the Prosecution's case inasmuch as in the FIR it is mentioned that Malini Ramani was present at the restaurant; that George Mailhot says that Shyan Munshi was with some boy but did not say that the man shot Jessica Lal; Shyan Munshi in the FIR says that he saw Beena Ramani, therefore, the story cooked up by Beena that she accosted the man who had shot Jessica Lal is a concoction. The entire family had been put under great pressure by the Police who threatened to implicate them in the present case for removing evidence and also in a false excise case in which they were ultimately got let off lightly. No importance can be attached to the statement of Beena Ramani. Counsel went on to submit that on 31.5.1999, a photograph of Manu Sharma was taken by the Police from the Farmhouse of his father. It was here that his pistol and ammunitions were also taken into possession but no recovery memo was made. This was deliberately done to implicate Manu Sharma in this case. PW-101 admits of having taken up photographs of Manu Sharma from the Farmhouse. He also admits that no recovery memo was made. This clearly shows that the investigation has deliberately cooked up a false case of Manu Sharma having used his licensed gun or Manu Sharma having used his gun to kill Jessica Lal and is now not producing that licensed weapon.

17. Mr. Ram Jethmalani in support of his contentions referred to the following judgments:

State of Rajasthan v. Teg Bahadur and Ors. (2004) 13 SCC 300; State v. Siddarth Vashisth@Manu Sharma and Ors. 2001 III AD (DELHI) 829; Sohan Lal alias Sohan Singh and Ors. v. State of Punjab ; Sat Paul v. Delhi Administration ; T.D. Kumar and Bros. Private Ltd. v. Iron and Steel Controller and Ors. ; Page 0019 R v. R. Turnbull 63 Criminal Appeal Report 132; Budhsen and Ors. v. State of UP ; Duraipandi Tewar and Ors. v. State of Tamil Nadu ; Hari Nath and Anr. v. State of UP ; Bollavarapu P N Reddy and Ors. v. State of A.P. ; Laxmipat Choraria v. State of Maharashtra ; Ravindra @ Ravi Bansi v. State of Maharashtra ; The King v. Thomas Dwyer and Allen Ferguson (1925) 2 K B 799; Sharad Birdi Chand Sharda v. State of Maharashtra ; Ramgopal v. State ; State of H P v. Om Parkash ; Mukhtar Ahmed Ansari v. State ; Raja Ram v. State of Rajasthan JT 2000 (7) SC 549; Emperor v. Ardali Mian AIR

1933 Patna 496; Jagdeo Singh v. Emperor 24 Cr L J 69; Sukhram v. State of M.P. 1989 C C Cases 135 (SC); Zahira Sheikh v. State of Gujarat 2004 (2) SCC 158; Satyajeet Banerjee v. State of West Bengal ; Tokh Ram v. State 1982 Cr L J; P Varadrajulu Naidu v. King Emperor 2nd 42 Mad 885; Kessowji Issur Great Indian Peninsula, 34 Indian Appeals 115 : 2nd Vol.XXXI PC 381; Arjan Singh v. Kartar Singh ; Empress of India and Anr. 2nd 5 ALL.218; Abinash Chandra Bose v. Bimal Krishna Sen and Anr AIR 1963 SC 316; Ukha Kohle v. State of Maharashtra AIR 1963 SC 1531; State of Gujarat v. Mohanlal ; Bir Singh and Ors. v. State of UP ; Rajeshwar Prasad v. State of W.B. AIR 1965 SC 1887; M P Lohia v. State of West Bengal ; The King v. Parke (1903) K B 432; Ramchander v. State of Haryana ; Emperor v. Ram Page 0020 Singh AIR 1948 Lah. 24; Rao Harnarain v. Guman Ram ; Smt. Padmavati v. R K Karanjia AIR 1963 SC MP 61; Sebastian v. Karunakaran ; Banu Singh v. Emperor X CWN 962; Ramanathan v. State of Tamil Nadu ; State of Delhi v. Sanjay Gandhi ; M.P. Narayana Menon 1925 MADRAS 106; Mohinder Singh v. State AIR 1963 SC 415; Zahiruddin v. Emperor AIR 1947 PC 75; R v. Preston (1993) 4 ALL E R 838; Practice Note (1982) 1 ALL E R 734; Jagjit Singh alias Jagga v. State of Punjab ; Maruti Rama Naik v. State of Maharashtra ; Hallu and Ors. v. State of Madhya Pradesh ; Duraipandi Thevar and Ors. v. State of Tamil Nadu ; Somappa Vamanappa madar Shankarappa Ravanappa Kaddi v. The State of Mysore ; Ganesh Bhavan Patel and Anr. v. State of Maharashtra ; Tapinder Singh v. State of Punjab and Anr. ; Soma Bhai v. State of Gujarat ; Kanhai Mishra alia Kanhaiya Misar v. State of Bihar ; Willie (William) Slaney v. State of Madhya Pradesh ; State of Punjab v. Swaran Singh ; Basavaraj R. Patil and Ors. v. State of Karnataka and Ors. ; Dal Singh v. King-Emperor AIR 1917 PC 25; Habeeb Mohammad v. State of Hyderabad ; State of Kerala v. Ammini and Ors. ; Sidharth and Ors. v. State of Bihar ; Damodar v. State of Rajasthan and Budhsen and Anr. v. State of UP .

The propositions of law are well established and are not in dispute.

Page 0021

18. Factually, Mr. Jethmalani would have the court believe that Sidhartha Vashishta @ Manu Sharma was not present, Beena Ramani was not present, George Mailhot was not present, Deepak Bhagwant was not present and the Tata Safari was planted. He would also have us believe that two weapons were used which he supports with the aid of experts and Shyan Munshi.

19. Mr. Jethmalani having concluded his argument on behalf of Manu Sharma, left the remaining arguments to be concluded by Pt. R.K. Naseem, learned Advocate who addressed arguments on the importance of Tata Safari at Qutub Colonnade and thereafter its recovery from Noida. Counsel stressed that the vehicle was not present at the Qutub Colonnade in the first instance and the recovery of this vehicle from Noida was a 'plant'. He contended that the ownership is not in dispute. He also did not dispute that Sidhartha Vashishta @ Manu Sharma is a director of the Company, but went on to contend that the vehicle in question was allotted to Harvinder Chopra which has been amply proved by the statement of PW-25, Manoj Kumar, as also PW-26, Balbir Singh. He also

contended that the vehicle was not being used by Sidhartha Vashisht @ Manu Sharma which is evident from the deposition of PW-44, Shankar Mukhia, and PW-98, Babu Lal. In view of the above, counsel contended that there is no evidence on record to show that Sidhartha Vashisht @ Manu Sharma was either using the vehicle or was in possession thereof on the night of the occurrence.

20. Advancing his argument further, counsel submitted that the presence of Tata Safari at the Qutub Colonnade has not been proved. PW-83, Head Constable Devi Singh of the PCR reached the spot at 2.17 a.m. and his statement in court is contrary to the statement made to Police and, therefore, he is not a trustworthy witness. PW-78, Shri Sarad Kumar Bishoi does not talk about the Tata Safari in his statement to the police but has improved his statement in court. He too is not reliable and, in fact, a plant as he was supposed to be performing his assigned duty rather than be present at the Qutub Colonnade.

21. PW-100, SI Sunil Kumar, does not talk about Tata Safari in exhibit PW-2/A and, therefore, cannot be of any assistance to the prosecution. PW-30, Home Guard Constable Sarvan Kumar's testimony does not find corroboration from S.I. Sarad Kumar nor from PW-86, Jagannath Jha as also finds no support from PW-47, Jatender Raj, Manager. In other words, there is nothing on record to show with certainty that the Tata Safari was at the Qutub Colonnade on the night of 29/30.4.1999. He supported the findings of the trial court in paragraphs 257, 258 and 259.

22. Attacking the recovery, counsel submitted that there is evidence on record to show that the Tata Safari was recovered from Karnal. This fact having come on record, the assertion by the Prosecution that Tata Safari was recovered from Noida is a manipulation to further the Prosecution's case by planting evidence. The recoveries effected from Tata Safari do not further the case of the Prosecution regarding the broken pieces of glasses. Counsel also severely criticized PW-30 Constable Sarvan Kumar, as being a planted witness who has improved his statement considerably in court. Counsel also contended that the phone calls alleged to have been made by some of the Page 0022 accused persons amongst themselves is no indication that they were involved in any crime. The Prosecution has not placed on record any conversation to suggest such an involvement. Summing up his arguments, counsel strongly relied upon the judgment of the trial court and argued that the Prosecution has miserably failed to bring home the guilt of the accused.

23. Learned Counsel arguing on behalf of Shyam Sunder Sharma submitted that although this accused has been charged for an offence under Section 212 IPC, namely, harbouring Ravinder Krishan Sudan, but there is no incriminating evidence to suggest that Shyam Sunder Sharma ever harboured Ravinder Krishan Sudan. Similarly, Harvinder Chopra has been charged for arranging stay of Sidhartha Vashisht @ Manu Sharma at the house of PW-52, Chander Prakash Chopra, but there is no evidence whatsoever to support such a charge.

24. Counsel arguing for Yog Raj Singh submitted that the Prosecution in order to prove their case against this accused pressed into service PW-53, Abhijit Ghosal, PW-64 Ravinder Singh Gill and PW-65, Kulvinder Singh but have failed to bring home any evidence in support of the allegation that Yog Raj Singh arranged for Sidhartha Vashisht to be taken to Khera in Muktsar, Punjab. Similar arguments were made in the case of Vikas Gill who was alleged to have taken Sidhartha Vashisht to

Panchkula from Delhi. There is no evidence to this effect on record.

25. Learned Counsel arguing on behalf of Amardeep Singh Gill stated that the allegation against him is that he drove the Tata Siera car to Qutub Colonnade after the incident to enable Vikas Yadav to remove the same and, therefore, was alleged to have committed an offence under Section 201/120B IPC is baseless. Counsel argued that the only evidence against Vikas Yadav is him being identified by PW-30, Sarvan Kumar who is not a reliable witness. His presence at Qutub Colonnade is doubtful. Besides, Tata Safari was not reported to be parked at Qutub Colonnade in the first instance. Sarvan Kumar has been a planted witness to prove the events which have got no bearing with the actual crime. In any event, the car which Amardeep Singh Gill is stated to have driven was a Tata Siera belonging to Alok Khanna being car No. MP-04-2634. This is in spite of the fact that Amardeep Singh Gill had his own Tata Siera. Counsel also went on to stress that presuming the Tata Safari was removed by Vikas Yadav with the aid of Amardeep Singh Gill, no offence has been committed since the Prosecution has failed to prove any destruction of evidence by Amardeep Singh Gill or Vikas Yadav.

26. Arguing on behalf of Vikas Yadav, counsel pointed out that even if for the sake of arguments, and without conceding, Vikas Yadav had removed the Tata Safari car from Qutub Colonnade after the incident, the same did not amount to an offence under Section 201 IPC since the accused did not cause any evidence of commission of an offence to disappear nor is it proved that there was any intention to screen the offender from legal punishment. The Tata Safari was not used in the commission of the offence and its removal could not be said to be causing any evidence of commission of an offence to disappear with intention of screening the offender. There is no evidence on record to show that the Tata Safari removed by Vikas Yadav was got repaired. Page 0023 Merely because Vikas Yadav obtained pre-arrest bail or stayed in hotel under an assumed name or that his bail was canceled, has got no relevance with the offence under Section 201 IPC for which he is charged. Counsel also contended that the identification of Vikas Yadav through photographs when he was in fact present, is of no consequence. In any event, there is no evidence to show that Vikas Yadav stayed in a hotel under an assumed name. PW-54, Varun Shah, PW-55 Mukesh Saini, PW-72 Lal Singh and PW-77 Gajender Singh, who were examined in this respect, do not support the Prosecution's case. Counsel relied upon and AIR 1956 SC 527, but pressed on the point that photographic identification was a weak piece of evidence specially when the accused is present, and Test Identification Parade could be held. Counsel, therefore, concluded that the material on record does not prove the charge under Section 201 IPC against Vikas Yadav.

27. Raj Chopra is charged for driving the car to enable Sidhartha Vashisht @ Manu Sharma to go to Chandigarh. Counsel also submitted that there is ample evidence on record to show that the car so used was already under transfer prior to the occurrence. Raj Chopra had no hand in the use of such a car. There is no evidence on record to show the involvement of Raj Chopra nor any evidence to prove the charge under Section 201 IPC against this accused.

28. We have heard counsel for the parties and, with their assistance, have gone through the voluminous record. The case set up by the Prosecution is that on 29.4.1999, a party was organized at the Tamarind Court inside Qutub Colonade. This party was a private one where people were invited

and the invitees could further invite guests. Liquor was being served. Jessica Lal and Shyan Munshi were in-charge of the bar. At this party, respondents 1 to 4 came after the party was over and began looking for liquor. They were refused liquor since the bar was closed. Not being satisfied with this explanation, they went around in pursuit thereof and ultimately came back to the restaurant where they were once again refused liquor, here Sidhartha Vashisht @ Manu Sharma took out a pistol and fired the first shot into the ceiling and the next shot at Jessica Lal. The shot hit Jessica Lal in the head and proved fatal. Manu Sharma was, more or less, simultaneously stopped by Beena Ramani and questioned as to why he had shot Jessica Lal? She also demanded he give her the gun. She followed the assailant in an attempt to corner him but then told her husband to identify the vehicle in which he may make his escape. To prove this part of the case, the Prosecution pressed into service PW-1, Deepak Bhojwani, PW-2, Shyan Munshi, PW-6, Malini Ramani, PW-19, Andleep Sehgal, PW-20, Beena Ramani, PW-24, George Mailhot, PW-23, Rouble Dunglay, PW-70 Rohit Bal, PW-9, Dr. R.K. Sharma, PW-46 Madan Lal and PW-47, Jatinder Raj.

29. PW-1, Deepak Bhojwani has deposed that on 29.4.1999 he had gone to attend the aforesaid party at about 11.00 p.m. at the open area of Qutub Colonnade known as ?Tamarind Court?, the closed area called as ?Tamarind Cafe?. He had purchased four coupons of Rs. 100/- each on that day. Jessica Lal and Shyan Munshi were serving liquor on that night at the Page 0024 bar counter. He knew Jessica Lal for the past six years whereas Shyan Munshi was introduced by Jessica Lal to this witness about a week before. The bar counter was located in Tamarind Cafe open area between the two doors of Tamarind Court. He has deposed that there is a permanent bar counter in Tamarind Cafe but being summer, nobody was using the bar counter giving preference to the bar counter located outside. A large crowd was in attendance at the aforesaid party. At around 1 O'clock midnight, the witness went to the bar counter to have his third drink when Jessica Lal told him to encash all his coupons since the liquor was running out. The witness then handed over another coupon and purchased two pegs of whisky. While he was holding two glasses of whisky, he came in contact with a person having fair complexion who was smiling. The witness reciprocated and both introduced each other. This fair complexion person gave his name as 'Manu Sharma' and inquired as to how the witness had two glasses of whisky when Manu Sharma was unable to get even one. Manu Sharma requested the witness to arrange liquor for him. But this witness showed his inability as the bar had closed. Just about that time, a tall Sikh gentleman whispered something to Manu Sharma and took him away towards Tamarind Cafe. The witness says he can identify Manu Sharma and the tall Sikh gentleman referred to above. In court, the witness correctly identified both Manu Sharma and the tall Sikh gentleman as 'Tony Gill'. The witness also identifies the other person accompanying Tony Gill. In Court he pointed towards Alok Khanna. The witness goes on to depose that Manu Sharma, Tony Gill and Alok Khanna and Ors. had gone towards Tamarind Cafe even though it was closed and the waiters were in the process of removing the empty bottles. After about 10-20 minutes i.e. around 1.45 a.m. he heard noise emerging from Tamarind Cafe to the effect that Jessica Lal had been shot. At that time, the witness was present at Tamarind Court and was talking to his friend, Arash Aggarwal. On hearing that Jessica Lal had been shot, he rushed towards Tamarind Cafe but could not go inside, yet peeped and saw Jessica lying on the floor. The witness says that about that time 70-80 persons gathered around the gate of Tamarind Cafe. Jessica Lal was carried to Ashlok Hospital, Safdarjang Enclave and this witness followed in his car. He remained there for about and-and-half hours. Jessica Lal was then shifted to Apollo Hospital. This witness

went along to Apollo Hospital. At the hospital, Jessica Lal was declared 'brought dead'. The witness says about 10 photographs were shown to him to identify the fair complexion person and the Sardar. From amongst them he identified the photographs of Manu Sharma and Tony Gill. The photograph of Manu Sharma was marked 'A' and that of Tony Gill was marked 'B'. The Investigating Officer put his signature behind the photographs. These photographs were then identified by the witness in court as Ex. PW-1/A and PW- 1/B.

30. In cross-examination, the witness's credibility was sought to be questioned by contradicting him with his previous statements. In other words, the exact wording used in his 161 Cr.P.C. statement were put to him which differ from the statement made in Court but the overall impact of the statement was not such as could show the witness in poor light. The criticism of the trial court to the deposition of this witness appears to be self-contradictory. The learned Page 0025 Judge relies upon PW-1, Deepak Bhojwani, to establish the presence of accused 1 to 4 at the spot of occurrence on the night of 29/30.4.1999, yet goes on to agree with the counsel for the accused that PW-1, Deepak Bhojwani, has been introduced as a false witness in this case. The reasoning is that he does not find mention in the list of invitees prepared by PW-2, George Mailhot although Deepak Bhojwani is stated to have been very friendly with Jessica Lal. Another aspect is that PW-73, Sabrina Lal, did not mention that PW-1, Deepak Bhojwani, was present at Ashlok Hospital. Further that the statement of Deepak Bhojwani was recorded on 14.5.1999 and that Deepak Bhojwani is an interested witness. With very great respect to the learned Judge, we may point out that this manner of testing the credibility of the witness is hardly a rule of appreciation of evidence. It is not necessary that every witness must see the other and only then can they be relied upon. Each witness deposes to what he saw or what he did. Merely because out of 100 people present, some witness does not see the other witness is no ground to discard his evidence. Even if his name did not figure in the list of invitees is of no consequence since the list was not exhaustive. Deepak Bhojwani has deposed to the factual aspect to which he was a witness. This part has been sufficiently corroborated in its own way by other witnesses, namely, the presence of accused 1 to 4 at the place of occurrence. The trial court itself relies upon this witness to show the presence of the accused persons and yet goes on to hold him as bad witness. Obviously, this reflects total lack of application of mind and suggests a hasty approach towards securing a particular end, namely, the acquittals. This witness states that Jessica Lal and Shyan Munshi were serving liquor on that night at the bar counter which stands corroborated by other witnesses. He met the fair complexion man who exchanged niceties with him and introduced himself as Manu Sharma. The presence of Manu Sharma is corroborated by PW-20, Beena Ramani, PW-6, Malini Ramani and PW-24, George Mailhot. There is nothing to suggest that this witness had any motive to falsely implicate any of the accused persons. The witness was wrongly discarded by the trial court. Further, the trial court, if it actually entertained the issue of Bhojwani being a planted witness could not have stopped at this. The consequences of false implantation must necessarily have followed such a finding. In fact, we find from the evidence of Bhojwani that he did not claim himself to be an eye witness of firing which he could have claimed if he was to depose falsely at the instance of the Police.

31. PW-2, Shyan Munshi, is the maker of the FIR. His testimony has been attacked as being hit by Section 162 Cr.P.C. on the ground that his statement to the Police was signed, it was used to cross-examine the witness by the Prosecution itself and, therefore, his evidence cannot be relied

upon. It was the submission of Mr. Jethmalani that really the FIR was the phone call from Rohit Bal or PCR message to the concerned Police Station which set the criminal process into motion.

32. We have gone through the testimony of this witness. He has admitted his presence at the Tamarind Cafe at the time of the incident. He has also admitted that Jessica Lal was shot at by someone on her refusing to oblige him with a drink. To this extent, there is no doubt that he has supported the Prosecution's Page 0026 version. He has, however, deviated from his earlier version before the Police given by him in the form of his first information statement, Ex. PW-2/A inasmuch as at that time he had claimed that there was one person only who had demanded whisky from Jessica Lal and on her refusal to give him whisky he had first fired towards the ceiling and then a second shot at her while now in Court he has taken a somersault and come out with a version that there were two gentlemen at the bar counter, one of whom was wearing a white T- shirt, which, as per the Prosecution case, Sidhartha Vashishta @ Manu Sharma was wearing, who demanded whisky from Jessica Lal and when Jessica Lal refused to give him whisky, he fired a shot towards the ceiling and at that time another gentleman fired at Jessica Lal which injured her. The witness also claimed in court that Sidhartha Vashisht @ Manu Sharma was not the person who either fired towards the ceiling or at Jessica Lal. Because of this changed version, he was cross-examined by the Special Public Prosecutor. In his cross-examination, he was duly confronted with his signed statement, Ex. PW-2/A, wherein he had categorically claimed that it was only one person who had fired both the shots. Of course he denied having made any such statement to the Police. However, we have no manner of doubt that on this aspect he is telling a complete lie. He has admitted his signatures on the said statement. He has not claimed that Police officials had exerted any pressure on him to put his signatures on that statement. All that he is now claiming is that the said statement was recorded in Hindi while he had narrated the whole story in English as he did not know Hindi at all. We do not find this explanation of this witness to be convincing. Whether he had dictated his version to PW-100, SI Sunil Kumar, in English or not has no significance because SI Sunil Kumar has categorically stated during his evidence that he had reduced into writing whatever had actually been narrated to him by this witness. We have no reason to disbelieve SI Sunil Kumar on this aspect of the matter. We cannot accept that SI Sunil Kumar would have concocted such a detailed statement on his own without the witness having actually told the facts to him. There is another reason also for not accepting the version of Shyan Munshi and that is that even Beena Ramani says that Shyan Munshi's statement was recorded by the Police in her presence. Apart from that, it is significant to note that the statement of this witness was recorded on 30th April, 1999 itself and thereafter he never raised any grievance at any time before any authority that the Police had recorded incorrect version in his statement Ex. PW-2/A. He has come out with this explanation for the first time in Court and we have no manner of doubt from the facts and circumstances of this case that he was won over by the accused, Sidhartha Vashisht @ Manu Sharma. Learned Additional Solicitor General had pointed out to us the trial court record, about which no dispute was raised on behalf of the accused, Sidhartha Vashisht @ Manu Sharma, where in one of the proceedings recorded by the Additional Sessions Judge at the time of hearing of bail application of Sidhartha Vashisht @ Manu Sharma, the presence of one Advocate , Ashok Bansal was recorded on behalf of Sidhartha Vashisht @ Manu Sharma. Shyan Munshi, during his cross-examination by the Public Prosecutor, has himself admitted that while coming to Court to depose in this case was escorted by his counsel Mr. Ashok Bansal Page 0027 who had earlier appeared as counsel for Sidhartha Vashisht @ Manu

Sharma and also appeared at the time of pronouncement of judgment on 21.2.2006 for Manu Sharma and other accused as well. This tell tale circumstance leaves no doubt that the new story this witness has introduced during trial is an 'afterthought' as also a total lie at the instance of the accused. His credibility was totally impeached during his cross-examination by the Public Prosecutor. In these circumstances, we cannot consider this witness to be of any worth, although we agree with the submission of Mr. Jethmalani that some part of the evidence of even a hostile witness can be taken into consideration provided it inspires confidence and he is considered to be a reliable witness. We do not consider this witness to fall in that category of witnesses. We, therefore, do not find that the testimony of Shyan Munshi, in any way, can be utilised to the benefit of the accused, Sidhartha Vashisht @ Manu Sharma. Even if the deposition of PW-2 is discarded, the case of the Prosecution hardly gets affected. In this view of the matter we feel it unnecessary to go into the argument of Mr. Jethmalani that Ex. PW-2/A cannot be treated as an FIR.

33. PW-6 is Malini Ramani, She states that in the year 1999 parties were organized at Qutub Colonnade. Liquor was consumed at these parties. On 29.4.1999 there was a party at the Qutub Colonnade which was a Thursday. It was organized to bid farewell to her step father, George Mailhot, who was going abroad for five months. The witness was at Qutub Colonnade on that evening. Jessica Lal was also there. Her mother, (Beena Ramani) was also present. Shyan Munshi was also present. The party was over around 1.00 a.m. approximately and at about 1.45 a.m. the witness went along with Sanjay Mehtani to the restaurant to look for something to eat. The witness was holding a drink in her hand. She found Jessica Lal was there in the restaurant and Shyan Munshi along with some waiters was also present. She went behind the food counter looking for something to eat inside the Cafe but could not find anything. In fact, according to the witness, there was nothing to eat or drink for the last hour or so and lots of people were asking for more to drink and to eat. While they were standing at the restaurant, a couple of persons went in. They were about 4 or 5 in number. One of them asked this witness if he could have two whisky. The gentleman was wearing jeans and white T-shirt. He was in his mid twenties with fair complexion. His built was on the plump side. The witness showed her inability to provide liquor as the bar had closed. But he insisted and Jessica Lal and this witness repeated that the bar was closed. The gentleman said he could pay for his drinks upon which the witness said that he could not have a sip even for a thousand rupees. The gentleman retorted saying if that he could have a sip of her for a thousand rupees. This disgusted the witness who walked out at which time she came across her mother in the court yard. Her mother was walking towards the restaurant while this witness was going to the other side of the courtyard. Shyan Munshi came running to her screaming that Jessica Lal had been shot. The witness fainted at that time. This witness goes on to say that she can identify the person who had asked her for drinks and who was wearing jeans and T-shirt. The accused, Sidhartha Vashisht @ Manu Sharma, was correctly identified the one that 'looks like him' but later Page 0028 on asserted that he was the same person. The witness says that she came to know that Jessica Lal had died at about 6.00 a.m. when she was at home. The information was given to her by her mother. The witness was grilled extensively in cross-examination and confronted on various aspects with her statement before the Police, but stood her ground on whether Manu Sharma asked her for whisky though the exact words were absent.

34. The testimony of PW-6, Malini Ramani, has been discarded by the trial court being of little importance. since she was not an eye witness.

However, she is certainly a witness to identifying Sidhartha Vashisht @ Manu Sharma along with four or five persons present at the Tamarind Court as also having asked her for whisky and later misbehaving with her. We find it quite strange that at one stage the trial court has returned a categorical finding that four accused were present inside Tamarind Cafe and that finding has been given only on the evidence of PWs 1, 6, 20 and 24, yet their evidence has been doubted and that too without even making real analysis of their evidence.

35. The next witness of utmost importance of the case is PW-20, Beena Ramani. She states that she is the owner of a property near Qutub Minar bearing No. H-5/6, Mehrauli Road, New Delhi which was acquired in September, 1995. The property has a shopping arcade in the name of 'Qutub Colonnade', the name of the restaurant was 'Tamarind Court Cafe' which had a proper license for eating house. The license of the restaurant was in the name of 'Once Upon a Time' which started business in 1996. She goes on to depose that parties in the restaurant could be booked on any day as per the desire of the customer, but on Thursdays there used to be special private parties where guests could come by invitation. She goes on to say that liquor was served in the courtyard on Thursday parties. PW-6, Malini Ramani, used to manage these Thursday parties. The witness further states that she knew Jessica Lal and Shyan Munshi and that there was a proper staff to run the restaurant although friends did help in the Thursday parties. Jessica Lal and Shyan Munshi were friends of Malini Ramani and were helping her on that night. The witness goes on to depose that on the night of 29.4.1999, a Thursday party was organized to bid farewell to her husband who was leaving for a found-the-world trip. The party was over by 1/1.30 a.m. These Thursday parties and special parties were organized generally and were held in the courtyard and on the roof top. After the party was over, she was anxious to clean up the place and relieve the waiters so that they were available for proper duties on the following morning. At that time, there were some guests left in the courtyard and she spotted some guests in the restaurant where nobody was supposed to be. She walked towards the restaurant. While she was moving towards the restaurant, she crossed Malini Ramani . She moved into the steps of the restaurant and saws a few people standing next to the counter and heard a firing shot. A moment later, she heard another shot. At that time, Jessica Lal, who was standing with some people at the far end, was seen by the witness falling down. There was a door to her right which was swung open with Shyan Munshi coming out with some other person saying that Jessica had been shot. The witness told Shyan Munshi to call Police or doctor or ambulance and was stopping the man accompanying him. There was commotion. All the people who were with Page 0029 Jessica Lal starting coming out. The companion of Shyan Munshi was wearing a white T-shirt. He was chabbi and fair and this witness asked him as to who he was and why he was there and also why he had shot Jessica Lal. The witness also asked him to give her his gun, which she thought he was having. The person in the white T-shirt denied having shot yet, the witness goes on to say, she asked him again and he kept quiet shaking his head that it was not him. As all others were leaving, the person in the white T-shirt shoved the witness aside and went out. The witness followed him all the way to the front gate of the main building. She could not catch hold of this person. In the meantime, she was shouting instructions to guests to call hospital or to take Jessica Lal. On reaching the gate, she saw her husband standing there and told him that this was the man

who had shot Jessica Lal and to see in what car he was getting into. The witness goes on to say that the person who was told to be seen by her husband was with some friends at the time of occurrence inside the cafe. The witness identified Sidhartha Vashisht @ Manu Sharma by touching him and also went on to identify Amardeep Singh Gill, Alok Khanna and Vikas Yadav as the persons along with Manu Sharma. Further, the witness goes on to say that from the gate she returned to the restaurant where the waiters had slipped a table cloth under Jessica's body. The witness continued to give instructions to get medical help for Jessica and removed her to Ashlok Hospital. Jessica Lal was still alive and was removed to Ashlok Hospital in the car belonging to Sanjay Mehtani. The witness goes on to say that the report about the incident was lodged in her presence by Shyan Munshi. Jessica Lal was then removed to Apollo Hospital where she was declared dead. A week later, she saw Sidhartha Vashisht at the Police Station

36. This witness was cross-examined by counsel for Sidhartha Vashishta @ Manu Sharma, but to no meaningful end. In other words, her testimony remained unchallenged. The trial court while dealing with this witness has held that this witness does not further the case of the Prosecution as the witness was not an eye witness to the occurrence but a witness to the presence of Sidhartha Vashishta @ Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav at the Qutub Colonnade. The trial court also held that the deposition of this witness was vague since she thought that Manu Sharma was carrying a gun and also felt that he may have shot Jessica Lal. The Court also held that mere feelings were not enough and did not mean that Sidhartha Vashisht @ Manu Sharma had actually fired a shot at Jessica Lal. The trial court further went totally wrong in holding that PW-20 had admitted not seeing Sidhartha Vashisht firing a shot at Jessica Lal, but it was only her feeling. With great respect to the learned Judge, we find this is 'a complete misreading of evidence'. There is no suggestion let alone an admission on the part of PW-20, Beena Ramani, that she had not seen the accused Sidhartha Vashisht firing a shot at Jessica Lal. On the contrary, we find positive assertion by the witness to the following effect:

I saw a few people standing next to the counter and I heard a shot. A moment later, I heard another shot. Jessica Lal was standing with people at the far end and I saw her falling down. There was a door to my right. It could be swung open and Shyan Munshi came out with another person Page 0030 who was either ahead of him or behind him. Shyan Munshi said that Jessica Lal had been shot. I told Shyan to call the police or doctor or ambulance and I stopped the man accompanying him. There was commotion. All the people who were with Jessica Lal earlier, started coming out. The companion of Shyan was wearing white T- shirt. He was Chabbi and fair and I asked him as to who he was. ?Why are you here and why he shot Jessica Lal. I also asked him to give me his gun. I thought he might be having a gun?. He said that it was not him. I asked him again and he kept quiet and shaking his hand that it was not him. As all others were leaving, therefore, the companion of Shyan also shoved me aside and went out. I ran after him. Again said behind him all the way to the front gate of the main building. He was a few steps ahead of me and I could not catch him. In the meantime, I was shouting instructions to the guests to call hospital or to take Jessica Lal. I reached the gate. My husband was standing there and I told him that this was the man, who had shot Jessica Lal and to see in what car he gets into.

37. This statement of Bina Ramani clearly shows that she had herself seen Sidhartha Vashisht shooting Jessica Lal as otherwise she had no reason to ask him why he had shot Jessica Lal. The aforesaid view taken by the trial Court appears to have been taken on a concession made by the Special Public Prosecutor himself who put forth this argument that it was her feeling that Manu Sharma might have shot at Jessica Lal and also that she had admitted that she was not an eye witness. The trial court, however, instead of itself reading the evidence of Bina Ramani proceeded to wrongly record acceptance of this submission of the prosecutor. If the evidence of the witness had been read properly, the Court could not have held that this witness had admitted that she had not seen Manu Sharma firing at Jessica Lal. There is no suggestion, let alone an admission on the part of PW-20, Bina Ramani, that she had not seen the accused Sidhartha Vashisht firing a shot at Jessica Lal. This kind of approach of the trial Court has caused grave miscarriage of justice. There is no doubt that the Court is not supposed to simply convict someone without any evidence but at the same time the Court is also to ensure that guilty is not allowed to go scot free simply by accepting concessions made by the Public Prosecutor.

38. Beena Ramani's presence as an eye witness was sought to be challenged by recourse to the deposition of PW-46, Madan Kumar, and PW-47, Jatinder Raj, who were employees at the Qutub Colonnade. It was argued that Madan Kumar rushed to the spot after hearing ?goli lag gai? and saw Jessica Lal lying on the floor. Some guests, Beena Ramani and Jatinder Raj were present there. This part of the deposition is sought to mean that Beena Ramani did not confront Manu Sharma nor followed him nor asked George Mailhot to keep a watch on Manu Sharma. However, from an analysis of the testimony of PW-46, we find that he came to the spot subsequent to the fire. He did not hear the firing but heard people shouting ?goli lag gai?. It is then that he ran down by which time Beena Ramani must have returned to the Cafe after confronting Manu Sharma. This witness certainly deposes to the presence of Beena Ramani at the spot. He also corroborates Beena Ramani's actions thereafter. PW-47, Jatinder Raj, has stated that he was counting cash and Page 0031 was tallying the same when he heard firing of two shots from the side of the Cafe. He saw from the gate of his office people coming in and going out. At that time he saw Beena Ramani at the stairs of the cafe. He rushed towards her and both went inside the cafe. This, by itself, does not show that when the shots were fired, the witness was along with Beena Ramani in the Cafe. He also came soon after Beena Ramani had come back to the Cafe. Since he was the in-charge of the cash, he would have never left the cash unattended or without securing it before running out. We, therefore, find no substance in the criticism that Beena Ramani was not present when the shots were fired.

39. From the above it cannot be said that Beena Ramani had not seen Sidhartha Vashisht @ Manu Sharma firing at Jessica Lal. On the contrary, it is a positive statement of the witness that it was Sidhartha Vashisht @ Manu Sharma who fired at Jessica Lal after which Jessica Lal fell down. The witness is a witness of events that took place and is an eye witness to the main occurrence. We have already pointed out that this witness has not been cross- examined at all on this aspect. A general criticism of the Ramani family has been made by learned Counsel for Manu Sharma that they were under constant Police pressure and, therefore, were toeing the Police version.

40. We have given our careful thought to this argument and find no substance in it. The excise case which is being trumpeted as Police pressure, can hardly be said to be of such a nature as could

warrant the entire family supporting a false or a frivolous case. In any event, in the excise case the accused pleaded guilty and were sentenced with a fine only. The mere fact that Beena Ramani, Malini Ramani and George Mailhot were called to the Police Station on several occasions, is no indication of Police pressure to book a false case and their repeated interrogation cannot be made a ground to discard this evidence since they were accused in an excise case where investigation was going on. Their sustained interrogation was necessary because they were running illegal pub. There were so many VIPs in that illegal pub on the fateful night. We were told during the arguments by the learned Standing Counsel for the State that one very senior police officer had also attended that party on 29th April, 1999. So, there was nothing abnormal in the repeated interrogation of the Ramani family as the police might be wanting to find out who those persons were and why they were coming to that illegal pub. The argument that the testimony of PW-20, PW-6 and PW-24 is hit by Section 163 of the Criminal Procedure Code, though attractive it may sound, is devoid of any merits. From the analysis of the deposition of PW-20, whom we find a reliable witness and, in fact, the only brave person present in that party to muster courage to face the shooter while others who claim to be socialites, did not have the courage to raise a little finger to apprehend the culprit whom this witness was chasing and shouting that he was the person who had shot Jessica Lal, the involvement of Sidhartha Vashisht @ Manu Sharma in the murder of Jessica Lal is writ large. It was Sidhartha Vashisht @ Manu Sharma who pulled out his pistol, fired two shots one in the ceiling and the other at Jessica Lal.

41. Although the case against Sidhartha Vashisht stands fully proved by the testimony of PW-20 alone, yet we find sufficient corroboration to her testimony Page 0032 from the deposition of PW-24, George Mailhot, who deposes to the holding of the Thursday party on the fateful night and goes on to say that around 2.00 a.m. he was standing in the courtyard near a large tree about 20 feet away from the restaurant facing opposite the entrance gate of the restaurant when he heard two popshots like balloon. He turned towards the restaurant door and within few seconds Shyan Munshi came running saying that someone had shot Jessica. The witness went towards the restaurant and saw Beena Ramani, PW-20, addressing a young man who was moving around and Beena Ramani was following him and saying that ?you are the one, give me the gun?. He identified Sidhartha Vashisht as the person whom Beena Ramani was following. He also testifies having followed Sidhartha Vashisht on foot up to Adam Khan's tomb at which point Sidhartha Vashisht vanished. The witness then went on to the Police Station to lodge a report where he found that the report had already been lodged. He came back to Qutub Colonnade and found that Beena Ramani had already taken Jessica to the hospital. The witness subsequently saw Sidhartha Vashisht at Police Station Mehrauli.

42. In cross-examination on behalf of the accused, Sidhartha Vashisht, this witness was primarily cross-examined about his personal background and his interest in the property called 'Qutub Colonnade' as also about the nature of parties being organized there on Thursdays as well as on other days of the week. It was also elicited from him in cross-examination that after the incident, when the Police reached the spot, couple of bottles of liquor were mysteriously recovered from the restaurant by the Police. Relying on this statement also of George Mailhot, senior counsel for Sidhartha Vashisht submitted that this witness himself also wants to convey that the Police had foisted a false excise case against his family members and because of that they were pressurised to

falsely implicate Sidhartha Vashisht. This argument also cannot be accepted because admittedly the accused in the excise case had been convicted on their pleading guilty. A perusal of cross-examination of this witness also shows that virtually there is no cross-examination on the material aspect of his testimony in the form of his examination-in-chief except for a general suggestion given by him at the end of his cross-examination that he had identified accused Sidhartha Vashisht @ Manu Sharma at the asking of the Investigating Agency which, of course, he denied categorically. There is no particular challenge to his statement that his wife, Beena Ramani, was following the accused Sidhartha Vashisht @ Manu Sharma after the firing incident and on her telling him to follow Manu Sharma he had followed him up to a place from where he disappeared. Therefore, this part of the testimony of this witness fully corroborates the version of Beena Ramani to the effect that she had followed the accused Sidhartha Vashisht @ Manu Sharma only after the firing incident. Here again we may notice that as far as the presence of the accused Sidhartha Vashisht @ Manu Sharma at the time of the incident at the Qutub Colonnade is concerned, the trial court itself has accepted the Prosecution's case and categorically held that he along with his associates was present. We fully endorse that finding of the trial court and even counsel for the respondents before us, except for making a half-hearted submission that this finding of the trial court is not supported by any reasoning, no other cogent reason was given by them to reverse this categoric finding of the Page 0033 trial court regarding the presence of Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gill, Alok Khanna and Vikas Yadav at the spot. It was elicited from him that he had been visiting Police Station almost every day. It was on account of this statement made by him that it was argued on behalf of the accused that Ramani family was being pressurised to falsely implicate Sidhartha Vashisht as otherwise there was no occasion for the Police for calling Ramani family to the Police Station for days together when they were material Prosecution witnesses for this murder case. We have already rejected this argument being devoid of any merit.

43. The identification of the accused in Court by PWs. 1, 6, 20 and 24 was also challenged by counsel for the respondents on the ground that most of the witnesses admit that Police had shown them the photos of the culprits during investigation and for that reason Test Identification Parade was also refused. We think that on this ground, the evidence of PWs. 1, 6, 20 and 24 cannot be disbelieved. As per the Prosecution case, Sidhartha Vashisht @ Manu Sharma could not be traced out till 6.5.1999 on which day only he surfaced after his friends, Amardeep Singh, Alok Khanna had implicated him for the murder. The Police from 30.4.1999 itself suspected him and Manu Sharma was evading Police contacting him for interrogation, suspicion of Police got converted into a positive case of his involvement and in that event, his photo was shown to witnesses who had been claiming that they would be able to identify the culprits, there was nothing objectionable in that action of the investigating agency.

44. Regarding the allegation that Sidhartha Vashisht @ Manu Sharma was absconding, his counsel argued that it was false since the moment the co-accused implicated him on 5.5.1999, Manu Sharma himself surrendered on 6.5.1999 and before that, the Police did not have any evidence against him nor was he required to appear before the Police. This argument overlooks the fact that this accused has himself taken a plea that his farmhouse was raided on 30.4.1999 and certain articles were seized from there including his licensed pistol. This plea demolishes the argument that he was not evading the Police. If he says that his farmhouse had been raided on 30.4.1999, then he should have

surrendered on the same day itself as he did six days later. He knew before 6.5.1999 that Police was looking for him from 30.4.1999 itself and if he did not surrender immediately, the only inference which can be drawn by us is that he was absconding which circumstance can be utilized by the Prosecution to strengthen its case against him.

45. Another circumstance which substantiates the Prosecution's case regarding Sidhartha Vashisht's murdering Jessica Lal, is the recovery of Tata Safari from Noida which was removed from Qutub Colonnade by Amardeep Singh Gill @ Tony Gill and Vikas Yadav. We have evidence on record to show that Tata Safari No. CH-01-W-6535 was parked at Qutub Colonnade in the night of 29/30.4.1999. This abandoned car belonged to Piccadilly Agro Industries Limited of which Manu Sharma was admittedly a director at that time. This vehicle was stated to be surreptitiously removed and then recovered from Noida. The criticism that the vehicle was, in fact, recovered from Karnal is misreading of statement of PW-100. PW-100 does not say Page 0034 that he recovered the Tata Safari from Karnal but deposes to the effect that the Piccadilly Agro Industries Limited was registered in Karnal. The Tata Safari was, in fact, recovered from Noida by U.P. Police and handed over by the court to the Delhi Police on superdari. The police official from Noida police station PW-91 SI B.D.Dubey had clearly deposed that he had recovered Tata Safari from Noida area on 02-05-99. His testimony to this effect has remained unchallenged and un-controverter. His cross-examination on behalf of accused Vikas Yadav and Sidhartha Vashisht was confined only to find out whether any finger prints were lifted from the Tata Safari and whether he was questioned by Delhi Police after its recovery. Although a suggestion was put to him that he had made a false statement in connivance with Mehrauli police but we have no reason to accept that, since no motive has been alleged against this witness for falsely depositing. It cannot be accepted that everybody on this earth had conspired to falsely implicate Sidhartha Vashisht nor he has made any such attempt to even probabilise his false implication. He has claimed that he was falsely implicated due to political influence but he has not even bothered to name the politician who could have got him falsely implicated in this case. The accused, at no point of time, made any complaint about missing of the vehicle which he now claims to have been taken into possession from Karnal.

46. There is yet another strong circumstance showing the involvement of Sidhartha Vashisht @ Manu Sharma in the murder of Jessica Lal and that circumstance is that he admits that he was having a licensed pistol of .22 bore. He is also not disputing that from the place of incident two empty cartridge cases of .22 bore were recovered by the police as also the fact that the mutilated lead bullet recovered from the skull of Jessica Lal was of .22 bore. In these circumstances and particularly when he knew that he had been implicated in this case for the offence of murder it was for him to have produced his licensed pistol as also the 25 rounds to show that he could not be involved in the murder of Jessica Lal in the manner claimed by the prosecution. He has, however, neither produced his pistol nor the cartridges of that pistol.

47. Sidhartha Vashisht @ Manu Sharma has taken a plea in his statement under Section 313 Cr.P.C. That there was no occasion for him to have produced his licensed pistol since the same had been seized by the Police along with the license and ammunition from his farmhouse at Sambhalkha on the night of 30.4.1999 itself when a search was conducted there. Support of this plea, which we find to be an afterthought and a concoction, was sought from the testimony of yet another hostile

witness, PW-44, Shankar Mukhia who is none other than his own employee on duty at his farmhouse. This witness was examined by the Prosecution to show that in the evening of 29.4.1999 Sidhartha Vashisht had gone from the farmhouse in black Tata Safari and then did not come back. However, he turned hostile and did not support the Prosecution on this aspect. Despite the fact that he had not supported the Prosecution's allegations involving Sidhartha Vashisht @ Manu Sharma, yet he was cross-examined by defense and then it was elicited from him that the Police had visited the farmhouse and had taken away the pistol and the license of Sidhartha Vashisht @ Manu Sharma. Credibility of this witness Page 0035 stood fully impeached in his cross- examination by the Public Prosecutor when he was confronted with his Police statement under Section 161 Cr.P.C. If actually any raid had been conducted in the farmhouse of Mannu Sharma on 30.4.1999 and something had been taken away by the Police, this witness would have definitely lodged a protest to the effect that the Police without giving him receipt had removed Manu Sharma's pistol and license. It is also significant to note that when during the investigation stage the Police was seeking Manu Sharma's police remand for recovery of weapon of offence, at which time he did not claim that the Police had already seized his pistol from his farmhouse. We find from a reading of the impugned judgment that no such plea was raised and no finding was returned on this aspect of the matter. We have no manner of doubt that if this argument had been advanced, it would have been met with. Before us it was argued by counsel for the appellant that when the Police had submitted a charge-sheet in Court and had supplied some document to him, an application was moved before the Magistrate requesting for supply of a copy of the seizure memo by which the Police had taken away the pistol from his farmhouse on 30.4.1999. Counsel drew our attention to that application dated 16.8.1999 which, according to the learned Additional Solicitor General, was clearly a plant in judicial record. There is no reference to any such application in any of the proceedings of the Magistrate. Not only that, it was submitted that even if it had been filed, it was only an eye wash, not to be pursued and, in fact, it was not pursued at all by insisting supply of such an important seizure memo. We are in full agreement with the submission of the learned Additional Solicitor General in this regard and have no hesitation in rejecting this plea of the accused. From the above, there is sufficient evidence to bring home the guilt of the accused, Sidhartha Vashisht @ Manu Sharma to the charge of murder of Jessica Lal.

48. The evidence of Ramani family, in particular of Beena Ramani as also the aforesaid circumstantial evidence have been rejected, with due respect, by the learned trial Judge, on wholly unsustainable grounds and we have no hesitation in concluding that the view taken by the learned trial Judge on the evidence of PW-20, Beena Ramani, PW-6, Malini Ramani and PW-24, George Mailhot as also regarding the presence of Tata Safari at the spot, its recovery from Noida with a live .22 bore cartridge could not have been taken at all. The view taken by the trial court is positively perverse.

49. We find that the Prosecution has led evidence in support of presence of Tata Safari at Qutub Colonnade by producing PW-30, Home Guard Constable Sharavan Kumar, who deposes that he accompanied Inspector Surender Sharma during the investigation of this case on 29/30.4.1999. He joined Inspector Surender Sharma at the gate of the police station and went to the spot in a Police gypsy. He was directed to keep vigil at the parking lot so as to ensure that no cars were removed. He saw five or six vehicles parked there, one of which was parked separately. He checked and found all

the vehicles locked. At around 3.40 a.m., he noticed a vehicle coming from Qutub side. It was a Tata Siera of white colour. Two persons were in the front seat. They stopped the vehicle near the black Tata Safari and began unlocking the same. The witness tried to stop them but could not and the black Tata Page 0036 Safari No. CH-01-W-6535 was driven away at which time he gave a danda blow to the rear right view glass of the same. The Tata Siera was being driven by a Sikh gentleman. He identified the Tata Safari CH-01-W-6535, Ex. PW-30/X. He also identified Vikas Yadav as the person who drove away Tata Safari and Amardeep Singh Gill as the driver of the Tata Siera. He was sought to be discredited primarily as being a planted witness since he was given regular appointment in Delhi Police as a reward for making a false statement in Court. His evidence is also sought to be discredited on the ground that he could not have been present at the place where he claims to have noticed the Tata Safari since in his cross-examination he has admitted that at the Police Station he had been assigned the duty of handing over one DD entry in respect of some other incident which was being inquired into by another Sub-Inspector at a place which was quite far away from the Police Station. It was contended that in normal course, this witness was supposed to be doing the duty assigned to him and could not be present at the parking lot at Qutub Colonnade where he claims to have noticed the Tata Safari lying parked and then being taken away. There is no doubt that this witness admits that he was given appointment in Delhi Police later on but from this fact it cannot be inferred that he was rewarded for making a false statement in this case. We see no reason why the Police should have planted a false witness.

50. The criticism as regards his presence at the spot, has been explained by the witness himself who says that he was at the gate of the Police Station, the SHO had come there and taken him along with him to Qutub Colonnade, we find nothing abnormal in that conduct of a constable when he is being asked by the SHO to accompany him to a place other than the place for which he was asked to go by the Duty Officer in connection with some other case. The SHO, PS Mehrauli also supports PW-30, Sarvan Kumar. The presence of PW-3 is also deposed to by other Police officials present at the spot.

51. From an analysis of the deposition of PW-30, we find him to be a natural witness of the case to which he has deposed. We also find the criticism against him to be a matter of meaningless hair splitting. There is a ring of truth around the deposition of PW-30 whom we find a reliable witness. The trial court, while dealing with this witness, has, with great respect, termed him as a 'planted witness'. This, we find, is not justified from material on record. The cursory manner in which the witness has been discarded shows a lack of proper appreciation of evidence. Once a reasonable explanation has been given by a witness for his presence at the spot, there was hardly any reason to stretch imagination to belie his presence. Merely because he was assigned to deliver a DD entry to SI Rishi Pal which, the witness explains, he did not deliver, the explanation given is logical and ought not to have been disbelieved in this strange way of assessing the material and discarding it. The findings of 'planting' are very serious observations and cannot be made in such a casual manner. There must be positive evidence to show that a witness is planted which must then result in consequential action against the Prosecution rather than using this merely to give benefit to the accused. Further observation of the trial court that PW-30 could not have been present in Dera Mandi Village and at the Qutub Colonnade at the same time, is Page 0037 wholly unfounded. The witness states that he did not carry the DD entry to SI Rishi Pal. Merely because Rishi Pal received the DD entry does not conclude that it was delivered to him by Sharvan Kumar.

52. The other criticism of the learned defense counsel qua the Tata Safari is that there is no witness who has seen Sidhartha Vashisht @ Manu Sharma arriving at the Qutub Colonnade in the Tata Safari. He claimed that the Tata Safari has been falsely planted by the Prosecution to implicate Manu Sharma. This criticism, we find, is devoid of substance. PW-30, as we have already stated, is a trustworthy witness who testifies to the Tata Safari being present and having removed by the co-accused of Manu Sharma. The attempt of learned Counsel to discredit PW-30 by recourse to the evidence of PW-47, Jatinder Raj and PW-86, Jagannath Jha, is of no consequence. PW-47 who states he did not see any private vehicle at the gate of the Qutub Colonnade at 3.15 a.m. only goes to show that he did not observe the presence of Tata Safari but does not rule out the presence of the Tata Safari. About PW-86's evidence, less said the better. He is thoroughly unreliable witness. He does not even know the difference between summer and winter and appears to have been won over by the defense.

53. The presence of Tata Safari at the Qutab Colonnade stands proved from the material on record. This circumstance lends assurance to the presence of Manu Sharma at the Tamarind Cafe and corroborates the type of ammunition used in the commission of the crime, empties whereof were recovered from the scene of occurrence and a similar live cartridge recovered from the Tata Safari. We have also noted that Harvinder Chopra does not claim that the Tata Safari which was allotted to him was missing on the date of incident or that he had made any report to the effect that somebody had stolen the same from Karnal. He also does not claim to be in possession of the said vehicle on the night of 29/30.4.1999.

54. From an appreciation of the material placed by the Prosecution on record, we find that the Prosecution's case that the Tata Safari was left abandoned by Manu Sharma and was subsequently removed by Vikas Yadav and Amardeep Singh Gill, stands proved.

55. Much was sought to be made of the report of the ballistic expert, Roop Singh, who opined that the empties recovered from the spot of the occurrence appear to have been fired from two weapons. We find from the material on record that the empties from the spot recovered vide recovery Memo Ex. 100/1 as also the live cartridge recovered from the Tata Safari, Ex.PW-74/A sent for examination in July, 1999. The report of Roop Singh Ex. PW-89/DB is not evidenced per se under Section 293 of the Criminal Procedure Code since it was a photo copy in which case it was incumbent upon the defense to examine Roop Singh, if they wished to rely upon his opinion. This having not been done, document Ex. PW-89/DB cannot be pressed into service to put up a case that two weapons had been used in the commission of the crime. As regards the second opinion of PW-95, Prem Sagar Manocha, we find that the opinion categorically states that it is not possible to say whether the cartridges have been fired from two different weapons. However, following a court question, the witness seems to have rattled out everything to the contrary to Page 0038 his own report to support the two weapon theory which was being pressed by the defense. This witness does not appear to be a trustworthy witness. Once having rendered an opinion that it was not possible to give a report regarding the empties being fired from two separate weapons, he could not have testified to the contrary without specifically carrying out tests for that purpose afresh. The sudden emergence of the work sheets in the court raises grave doubts as to the trustworthiness of this witness and genuineness of the work sheets. We need hardly belabor over this so-called scientific evidence since

its veracity is not beyond doubt. The two weapon theory appears to be a concoction to the defense and a manipulation of evidence in particular that of Shyan Munshi, PW- 2 who, for the first time in court, introduced such a story. The very fact that the empties were sent for examination at such a belated stage, cannot rule out the possibility of foul play to destroy the Prosecution's case during trial. We, therefore, do not think it necessary to go into further analysis of the evidence of Prem Sagar Manocha.

56. In the totality of circumstances adduced from material on record, the judgment under challenge appears to us to be an immature assessment of material on record which is self-contradictory, based on misreading of material and unsustainable. We find that Beena Ramani has identified Sidhartha Vashisht @ Manu Sharma, Amardeep Singh Gil, Alok Khanna and Vikas Yadav to be the persons present at the Tamarind Cafe at the time of the incidence. She also saw Manu Sharma firing the fatal shot which hit Jessica Lal. Her testimony finds corroboration from the testimony of Malini Ramani and George Mailhot. There is evidence on record to show that Manu Sharma had a licensed pistol of .22 bore which he has not produced to establish his innocence and on the contrary has taken false plea that the pistol, its ammunition and license had been removed by the Police on 30.4.1999. We also find from the material on record that Manu Sharma abandoned his vehicle while making good his escape. We also find that the ammunition used in the causing of the firearm injury to Jessica Lal was of .22 bore which Manu Sharma admittedly possessed and a similar live cartridge was recovered from the abandoned Tata Safari. From this, we have no hesitation in holding that Manu Sharma is guilty of an offence under Section 302 IPC for having committed the murder of Jessica Lal on 29/30.4.1999 at the Tamarind Cafe as also under Section 27 Arms Act.

57. Coming to the case put up by the Prosecution as regards Vikas Yadav and Amardeep Singh Gill, we have noted above that both these accused were present at the Tamarind Cafe when Manu Sharma caused firearm injuries to Jessica Lal. These two persons subsequently were seen by PW-30 Sharvan Kumar, coming in a white Tata Siera driven by Amardeep Singh Gill from which Vikas Yadav alighted and surreptitiously removed the Tata Safari which was being guarded by Sharvan Kumar. The very fact that Vikas Yadav removed the Tata Safari from Qutub Colonnade is sufficient to bring home his guilt under Section 201 IPC since he and Amardeep Singh Gill both knowing that an offence has been committed at the Tamarind Cafe by Manu Sharma caused the Tata Safari, which is part of the evidence, to be removed with an intention to screening Manu Sharma. From these circumstances it is evident that the Tata Safari was removed from outside Qutub Colonnade pursuant to a Page 0039 conspiracy between Vikas Yadav, Amardeep Singh Gill and Manu Sharma. Therefore, these three accused are guilty of having conspired to remove the Tata Safari from Qutub Colonnade and are held guilty under Section 201 read with Section 120B IPC.

58. As regards Shyam Sunder Sharma, he was charged for an offence under Section 212 IPC for harbouring Ravinder Krishan Sudan. We find there is no incriminating evidence to suggest that Shyam Sunder Sharma ever harboured Ravinder Krishan Sudan. Even otherwise, Ravinder Krishan Sudan has been declared a Proclaimed Offender and has not faced trial. This charge against Shyam Sunder Sharma cannot be sustained. Consequently we uphold his acquittal under Section 212 IPC as also 201 IPC and dismiss the appeal qua Shyam Sunder Sharma due to lack of evidence.

59. The case against Harvinder Chopra is that he arranged for the stay of Sidhartha Vashisht @ Manu Sharma at the house of PW-52, Chander Prakash Chopra, thereby committing an offence under Section 212 IPC. From the material on record, we find there is no evidence to suggest that Harvinder Chopra arranged for stay of Manu Sharma at the house of PW-52, Chander Prakash Chopra. Chander Prakash Chopra himself has not supported the Prosecution's case. We, therefore, find no evidence to convict Harvinder Chopra of the offence under Section 212 IPC. Consequently we uphold his acquittal under Section 212 IPC and dismiss the appeal qua Harvinder Chopra.

60. The case against Yog Raj Singh is that he facilitated Sidhartha Vashisht @ Manu Sharma being taken to Khera, Muktsar in Punjab and harboured Sidhartha Vashisht @ Manu Sharma. To substantiate this case, the Prosecution examined PW-53, PW-64 and PW-65. We find that none of these witnesses have supported the Prosecution's case and there is no other evidence on record which suggests that Yog Raj Singh is guilty of harbouring Sidhartha Vashisht @ Manu Sharma at Khera in Muktsar (Punjab). Consequently we uphold his acquittal under Section 212 IPC and dismiss the appeal qua Yog Raj Singh.

61. The case against Vikas Gill was that he was charged for escorting Sidhartha Vashisht @ Manu Sharma to Panchkula between 30.4.1999 and 1.5.1999 and harboured him with the intention to screening him from legal punishment. We find from the record that there is no evidence to the effect that Vikas Gill took Sidhartha Vashisht @ Manu Sharma to Panchkula from Delhi and/or harboured him at any place. Consequently we uphold his acquittal under Section 212 IPC and dismiss the appeal qua Vikas Gill.

62. The case against Raja Chopra is that he provided a conveyance to Sidhartha Vashisht @ Manu Sharma within the meaning of Section 52A IPC in order to screen him from legal punishment. From the material on record we find no admissible evidence to substantiate the charge against this accused. Consequently we uphold his acquittal under Section 212 IPC and dismiss the appeal qua Raja Chopra.

63. As regards the case against Alok Khanna, he was charged under Section 120B read with Section 201 IPC for causing disappearance of Tata Page 0040 Safari from Qutub Colonnade. We find there is no evidence to link Alok Khanna with the conspiracy to remove or destroy evidence. No doubt, his car was used by Amardeep Singh Gill and Vikas Yadav to go to Qutub Colonnade to remove the Tata Safari, but this in itself is not sufficient to hold that Alok Khanna consented to or was a part of the conspiracy shared by Amardeep Singh Gill with Vikas Yadav to remove the Tata Safari from the Qutub Colonnade. In that view of the matter, we find that the Prosecution has not been able to bring home its case against Alok Khanna, The appeal qua Alok Khanna is dismissed.

64. We may also note here that Ravinder Krishan Sudan and Dhanraj were declared Proclaimed Offender by the trial court. Their case is not before us.

65. In the above analysis, while holding Sidhartha Vashisht @ Manu Sharma guilty under Section 302 IPC for the murder of Jessica Lal as also under Section 27 Arms Act and Section 201/120B IPC, we also hold Amardeep Singh Gill and Vikas Yadav guilty for the offence punishable under Section

201 IPC/120B IPC while upholding the acquittal of the remaining respondents of the offences charged against them. Accused Siddharth Vashisht @ Manu Sharma, Vikas Yadav and Amardeep Singh Gill be taken into custody forthwith and lodged in Central Jail, Tihar. The appeal is disposed of in the above terms.