

Additional Sessions Judge(West-04) vs State on 26 April, 2010

IN THE COURT OF SH. SATINDER KUMAR GAUTAM,
ADDITIONAL SESSIONS JUDGE(WEST-04) , DELHI.

SC NO. 8/3/08

State

Versus

1- Mukesh Kumar Yadav @ Chhotu,
S/o Sh. Raj Kishore Yadav,
R/o Village-Khadipur, P.S. Sanbarsa,
District- Seharsha, Bihar.

2- Vijay Kumar @ Monu Yadav
S/o Sh. Santosh Kumar Yadav,
R/o Village -Kasba Tali Ko Purva,
Post-KN1, P.S. Sultanpur,
District-Sultanpur, U.P.

| | |
|------------------------------|---|
| (i) Case arising out of | FIR No. 304/2006 U/S: 302/394/201/34 IPC P.S. Civil Lines |
| (ii) Date of FIR | 03/10/06 |
| (iii) Date of Institution | 07/03/07 |
| (iv) Date of Final Arguments | 23.04.2010 |
| (v) Judgment reserved on | 23.04.2010 |
| (iv) Date of judgment | 26.04.2010 |

JUDGMENT

The case of the prosecution unfolded from the deposition of PW33 Insp. Kanchan Kumar Upadhyay are that on 3.10.2006 on receipt of DD No. 29/A, he along with SI Satiyappa, ASI Rajbir, Ct. Subhash, and Ct. Raj Kumar reached at 12 Raj Niwas Marg at about 8.20 pm where the door was locked. After sometimes complainant Gurcharan Singh with his servant Mukesh and Suresh and one Parvinder Kaur came there. Mukesh opened the door with the key and then they went to fist floor where they found that one lady lying on the floor in pool of blood in injured condition, she was immediately sent to Parmanand Hospital. He left Ct. Raj Kumar at the spot and Insp. K.K. Upadhyay along with Ct. Subhash came to Parmanand Hospital and collected the MLC. The doctor had opined patient brought dead. He obtained pullanda of cloth of deceased prepared by doctor which he seized vide seizure memo Ex. PW16/B and came back to the spot again. Crime team and dog squad had already reached at the spot. The spot was got inspected by crime team. The photographs of the spot were taken. He recorded statement of Gurcharan Singh Ex. PW3/A and prepared the tehrir Ex. PW34/A and sent rukka through Raj Kumar who got registered the FIR in the present case. IO Insp. Kanchan Kumar Upadhyay prepared the site plan of place of incidence Ex. PW34/B, from the first floor bed room , blood stain in the gouge taken and kept in small plastic box. Blood stained pieces of floor was seized and kept in plastic box, pieces of floor without blood also taken & kept in plastic box, telephone instrument having blood on its receiver also taken. Bunch

of keys also taken & one pair of chapples having blood stains also taken. All these articles were separately sealed in six pullandas with the seal of KKU & seizure memo ExPW6/A was prepared. Thereafter they came to the kitchen at ground floor. Blood spots were scratched and kept in a plastic box,& blood stain floor pieces and without blood stain floor pieces were also taken in three separate plastic box. All these three pullands were sealed with the seal of KKU and memo Ex.PW3/B was prepared as well as recorded statement of witnesses.

Thereafter, Mukesh was interrogated. IO deposited the Pullanda in the Malkhana. He handed over custody of accused Mukesh Kumar Yadav to Inspector V.K.Bhatia and gone to the house of complainant for the purpose of investigation. Then Inspector V.K.Bhatia informed him at telephone that accused Mukesh wanted to confess the crime so he along with Jitender Pal Singh , HC Surinder came to STA Chowk . The accused Mukesh was also brought by Inspector V.K.Bhatia at police booth STA Chowk , Rajpur Road Authority and he again interrogated Mukesh. Accused confess that he alongwith his co-accused Vijay Kr had murdered Charanjeet Kaur and had taken away the government currency note lying in the house which is approximately Rs. 22,13,000/- . IO Insp. Kanchan Kumar Upadhyay arrested the accused Mukesh Kumar vide arrest memo Ex PW 1/D and his personal search memo conducted vide EXPW1/E. Discloser statement of accused Mukesh Ex.PW1/C also recorded.

Accused Mukesh disclosed that he had conceal the knife in the guard room of the said house. They went to the guard room with accused Mukeash and accused Vijay Kumar got recovered from the slab of room two knives and also informed that the knife was having wide blade with accused Vijay and knife having thin blade was with Mukesh . Both the knives were seized in separate pullanda with seal of KKU and same is seized vide seizure memo Ex.PW1/H. Accused Mukesh Kumar also produced his blood stained pent & shirt which he disclosed that he was wearing at the time of incident. The same was sealed in a cloth pullanda with seal of KKU and memo ExPW1/J was prepared. He left accused Mukesh in custody of Inspector Bhatia and he alongwith J.P.Singh reached Subzi Mandi Mortuary. Where prepared inquest papers, requested for the postmortem examination of deceased vide application Ex.PW34/C and filled Form 25.35 (1B) vide Ex.PW34/D. IO Insp. Kanchan Kumar Upadhyay then came to ISBT where Inspector Bhatia with accused Mukesh came there and from ISBT they reached gali No. 15 at D/234, Ganwari Extn. where accused Vijay found and accused Mukesh pointed towards Vijay and PW J.P. Singh also identified Vijay. The accused Vijay Kumar was apprehended and in his interrogation made confession of the crime committed with the accused Mukesh. Accused Vijay arrested vide arrest memo EXPW1/M and his personal search was conducted vide memo Ex.PW1/N. Disclosure statement of accused Vijay vide Ex.PW1/L recorded and accused Vijay disclosed that the money brought from the house of deceased was lying in a iron drum on the slab in a room . Accused Vijay took out one jute cream colour bag on which Filter 2005 dosh was written on it. On checking the bag, it contained 2 Pottalis one of blue & one black colour was found. On checking black colour pottali 20 packets of Rs. 500/- containing 100 notes each were found, total currency of 10 lakhs. Currency notes were kept in same Pottli. On opening the blue colour Pottli ,it contained currency notes of Rs.1,000/-,500/- 100 etc. which were total Rs. 12,13,000/- which was again kept in the same Potli. Both pottalis were kept in same jute bag which was sealed with the seal of KKU and seizure memo Ex.PW1/O was prepared. Accused Vijay also produced one T-shirt and one pent which he was wearing at the time of incident. On

checking, the blood stain was found in cloths, cloths were sealed in pullanda with seal of KKU & memo EXPW1/D was prepared. Accused also produced a mobile phone Heire company having connection of Tata Income which he disclosed to have purchased out of the money looted from the complainant house. Mobile phone also sealed in a pullanda with the seal of KKU & memo EXPW1/Q was prepared. Bill of mobile phone also seized, vide seizure memo is EXPW1/R and same is Ex PX. Accused persons were handed over to Inspector Bhatia and IO Insp. Kanchan Kumar Upadhyay with J.P. Singh came to mortuary where dead body of deceased was handed over to the relatives. Statement of PW2/A &1/K recorded and came back to PS. Case property was deposited in Malkhana. Both the accused persons were produced in Aruna Asaf Ali Hospital for their medical examination, vide MLC EXPW8/A & 32/A. He had also seized the blood stain cloths of deceased after postmortem vide seizure memo ExPW16/A. Their blood samples were taken by the doctors which were seized vide seizure memo EXPW16/B & 16/C. IO Insp. Kanchan Kumar Upadhyay had recorded statement of witnesses. On 8.10.06 he had collected the postmortem report of deceased and on 9.10.06 he had sent three sealed parcels two of knives and one of clothes of deceased with his request to the doctor who conducted postmortem examination for seeking opinion regarding injuries. His application is Ex.PW 34/F. Dr. S.Lal had given his opinion which is ExPW30/ A1 to B,C,D,E & D & the Constable had also brought the sealed pullanda sealed with the doctors which were again deposited at Malkhana. He had also collected the calls details of PCR recorded in control room and obtained the documents relating to the possession of money in the house of complainant & complainant Gurcharan had produced the documents Ex PX-1,2, & 3 which were seized vide memo EXPW1/3. On 6.11.06 IO Insp. Kanchan Kumar Upadhyay had got inspected the scene of crime along with Inspector Devinder Singh, who is draft man had taken rough notes and measurements & later on collected the site plan EXPW 26/A. The photographs EXPW29/1 to 15 were also collected. The exhibits were sent to FSL Rohini on 19.10.06. He had also collected report of finger prints expert EXPW 19/A & the report of crime team EXPW 34/G and also collected report of finger print expert which he had given after comparison is EXPW13/A. The currency amount was released to the applicant on the basis of court order the photocopy of currency notes were prepared which is collectively Ex P-1. After completing investigation challan was filed. IO Insp. Kanchan Kumar Upadhyay had later on obtained report from FSL and filed in the court vide his application EXPW 34/H and reports are ExPW33/A to C.

On completion of provision u/s 207 IPC a prima facie charge for offence punishable u/s 394/397/302/411/201/34 IPC framed, upon both the accused persons. Both the accused persons pleaded not guilty for the same and claimed trial.

To bring out the guilt of the accused persons, prosecution examined material witness PW J.P. Singh., who is son of the deceased and has deposed that on 3.10.2006 he was residing at the above mentioned address and at about 8/8.30 pm he was on the way from Laxmi Nagar to Karol Bagh when he reached near Connought Place, he received an information on his mobile phone from Suresh Kumar who was the employee of his father. Sh. Gurcharan Singh, the someone had stabbed Bibiji i.e. his mother, who also informed him that this information was conveyed to him by his domestic servant Mukesh. Immediately, he came to his house where he learnt that his mother had already moved to Parmanand Hospital. He went there, where doctor had declared his mother as dead. He came back to his house where police met him and got inspected the spot. In the first floor

of the house in the bed room blood was lying on the floor near the bed. The police lifted the blood, blood stained earth and earth control. These items were sealed in separate parcel with the seal of KKU and were seized vide memo Ex. PW1/A. The police also lifted the blood sample, blood stained earth and earth control from the kitchen on the ground floor and seized them in a parcel with the seal of KKU and seized vide memo Ex. PW1/B. The police also seized a telephone instrument make Orpat and one pair of chappal having blood stains and bunch of keys also having blood stains. All these articles were sealed in a parcel with the seal of KKU and were seized vide memo Ex. PW1/A. It is further testified by PW1 J.P. Singh that the Mukesh was working as domestic help in their house three four months prior to the incident. However, he had worked with them for two years previously. When he had come to his house from hospital, he meet accused Mukesh there with police officials. On the next morning the IO of the case came to his residence. IO along with them reached STA chowk after receiving a call, where they met other police officials and accused Mukesh. Accused Mukesh admitted his guilt before the police. HE made disclosure statement, bear his signatures Ex. PW1/C. The police arrested him vide memo Ex. PW1/E. He then with police officials and accused Mukesh came back to his house. Accused made pointing out of place of occurrence and the place where he had washed away the blood stained knife. He then led the police party with him to the guard room near main gate where he had hidden both the knives. Accused Mukesh took out both the knives lying on the wooden plank just above the bed. Accused Mukesh told the police that one knife was used by him and the other one by accused Vijay present in the court who once was painter in his hotel while committing the offence. Both the knives were having blood stains. IO prepared sketch of the knives Ex. PW1/F and G. Both the knives were sealed in separate parcel with the seal of KKU and were seized vide memo Ex. PW1/H. Accused Mukesh was wearing blood stained clothes which were seized by the police in his residence and were seized vide memo Ex. PW1/I. Thereafter, he went to Mortuary with IO and identified the dead body of his mother vide memo Ex. PW1/K. On the same day, post mortem of the dead body was conducted. From mortuary he with IO came down to ISBT where other police officials were waiting for the accused Mukesh. They all of then proceeded to Bhajanpura. Accused Mukesh took them to a house in Gamri Village in Bhajanpura, where accused Vijay was staying as a tenant on the first floor. Accused Mukesh pointed out towards accused Vijay who was present there. He identified the accused Vijay there. Accused Vijay showed them where the money was lying made a disclosure statement Ex. PW1/I. Accused Vijay was arrested vide memo Ex. PW1/M and his personal search was conducted vide memo Ex. PW1/N. Accused Vijay took out currency notes amounting to Rs. 22.13 lacs from a drum by taking out a jute bag. Inside the jute bag the money was wrapped in two small turbans. All the items got recovered by accused Vijay were sealed with the seal of KKU and were seized vide memo Ex. PW1/O. The clothes of accused Vijay having blood stains were also seized vide seizure memo Ex. PW1/P. After sealing them with the seal of KKU. One mobile phone was also seized which was in the pocket of accused Vijay which he had purchased against receipt out of the robbed money. The mobile phone was also sealed with the seal of KKU and seized vide memo Ex PW1/Q. Accused Vijay had disclosed that out of the stolen money he had used Rs. 14,00/- or Rs. 1350/- for purchase of mobile phone. The receipt of the mobile is ex. PX1 recovered from the possession of accused Vijay and seized vide memo Ex. PW1/B The money recovered from the possession of the accused was in fact kept by them at their residence for the purpose of purchase of some property.

Another material witness PW3 Gurcharan Singh has deposed that , he is running a business of auto spare parts at Kashmere Gate and his son Jitender Pal Singh runs a company in the name of J.P. Overseas. He and his son and his wife were residing at 12, Raj Niwas Marg, Delhi for the last three years. His son used to leave the house at about 12/12.30 pm while he used to leave house at around 2 pm. On 3.10.2006 he left his house approximately at 12 noon or 12.30 pm and came back to his residence at about 2.30 or 3 pm. His son had also left the house at 12/12.30 pm. After taking meals, he again left his residence at 4.30 pm and at that time his deceased wife Charanjeet Kaur was in the house with maid servant namely Mukesh, who is working in their house for one and half month prior to the incident. Six months prior to that accused Mukesh had worked in their house for about one and half years. At about 6 pm he talked to his wife Smt. Charanjeet Kaur about two urgent files lying in the house and that around 6.30 pm he sent his office employee Amit to his house. Amit returned to his shop around 7 pm with both the files. Again he tried to contact his wife on telephone from 7.15 to 7.45 pm but there was no response on telephone though the tone of the telephone kept ringing. At about 8 pm accused Mukesh came rushing to his shop on cycle and told them that one masked person had caused stab injuries to Bibi i.e. his wife. He asked him as to where he was on which he replied that he was sent out by his wife to take tea leaves and he further told him that when he returned with the tea leave the said masked person hurled knife at him and he sustained injuries on his fingers. He further told him that the masked person was with three-four more persons. He thereupon with the Suresh, one girl Parminder Kaur and accused Mukesh himself came down to his residence in car. On the way, he informed the police on number 100/ When they reached home, the police was already there. Both the gates of his house were found closed. Accused Mukesh opened the gates with the keys already with him. He went to the bed room on first floor of his house with police and accused Mukesh. He saw that his wife Smt. Charanjeet Kaur was lying on the ground near the bed in a pool of blood. The receiver of the telephone was hanging and touching the ground. The blood was present on the floor. She was wearing one chappal on her foot and the other chappal was lying on the ground. Some of the articles in the room were found scattered. The key bunch was lying on the show piece having blood stains. In the meantime, DCP and ACP of the police had also reached and in the presence of police the wooden almirah was opened and they found approximately Rs. 25 lacs missing from the said almirah. The money earned from their business used to be given to his wife. The police took the dead body of his wife to the hospital. So far as he recollect his son J.P. Singh had come to the house after the dead body was taken to the hospital. Police conducted the proceeding. His statement was recorded at his residence, which is ex. PW3/A. After checking the accounts, they came to know that Rs. 22.40 lacs was missing from the almirah. The documents pertaining to the aforesaid amount were handed over to the IO. The documents are that of forwarding letter, statement of account of Centurain Bank of Punjab, Book of accounts of convest Overseas. The document are Ex. PX1 to Ex. PX3. The seizure memo of the documents is Ex. PW3/B. He also learnt that painter, who had worked in his house few days earlier to the incident, was also involved in the incident. He can identify the painter. The witness has identified accused Vijay as painter. Accused Mukesh used to stay either in kitchen or in servant room. He was not permitted to enter the bed room. During the investigation police recovered Rs. 22.13 lacks which was taken by him on supardari and identified the same as Ex. P1 collectively.

The Investigating Officer also examined the other witnesses i.e. PW4 Suresh, PW10 Parvinder Kaur, PW11 Amit Kumar. The dead body was also sent to Sant Parmanand Hospital. Crime team reached

at the spot and got conducted the necessary investigation.

PW26 Retired Inspector Devender Singh has taken the rough notes and measurement on the pointing out of Gurcharan Singh and on the basis of same he prepared the scaled site plan Ex. PW26/A. PW28 Manish Kumar was chowkidar in Kothi No. 2 Rajniwas Marg which is belonging to Mr. Jain and the deposed that accused Mukesh was working in the nearby kothi and pointed out towards the accused Vijay doing the painting work and on 3.10.2006 came there and spoken with him then accused Mukesh came out of the Kothi and had a talk with Vijay. They did not give him any reason and then Mukesh went inside the Kothi and accused Vijay went away. After some time in the evening he came to know that the lady of the Kothi was murdered. Police had come and made enquiries from him and he had narrated the incident to police.

PW30 Dr. S. Lal, Specialist Forensic Medicine has deposed that on 4.10.2006 he was posted at Aruna Asif Ali Hospital Mortuary, Subzi Mandi as a specialist. On that day he had conducted the post mortem on a dead body of Mrs. Charanjeet Kaur brought by Inspector K.K. Upadhyay, PS Civil Line. During post mortem he found 35 anti mortem injuries and prepared detailed report Ex. PW30/A and opined that the cause of death as hemorrhagic shock due to anti mortem injury to lung and abdominal organs. All injuries were anti mortem in nature and caused by single sharp edged weapon and recent in duration. The injuries No. 25,26,27,28,29,30,31,32,33,34 and 35 were sufficient to death in ordinary course of nature individually and collectively both. Time since death was 12 to 18 hours. PW30 Dr. S.Lal has also examined two pullandas of knife and one pullanda of cloths of deceased which is containing salwar, Kameej, bra and penty. He had examined the knives and the clothes and prepared a sketch of the knives Ex. PW30/B and Ex. PW30/C and prepared separate reports regarding examination of knives ex. PW30/D and of the clothes Ex. PW30/E and thereafter he had opined that injuries No. 1,2,3,4,5,6,7,8,12,13,14,15,16,17,18,19,20,21,22,23 and 24 were possible to cause by both the knives of parcel No. 1 and 2, the injuries No. 9,10,11,25,26,27,28,29,30,31,34, and 35 were possible to be caused by knife of parcel No. 1. Injuries No. 32 and 33 were possibly to be caused by knife of parcel No. 2. After examination of clothes the cut marks present on clothes were corresponding to stab injuries/incised wound present over body mentioned in the post mortem report. After the examination of exhibits same were resealed with the seal of AKJ mortuary seal and handed over to IO with the sample seal. All the documents bears his seal and sign at point A After examination of 35 witnesses prosecution evidence was closed. Statement of accused persons u/s 313 Cr.P.C recorded. All the incriminating evidence led by the prosecution were put to accused persons for which they deposed that they have been falsely implicated and they are innocent. They did not commit any murder or robbery. They have been falsely implicated by the police as the real culprits could not be found and the recovery was planted upon them. They have also refused to lead any evidence in their defence.

I have heard the submission of Ld. Public Prosecutor and LD. counsel for the complainant as well as Ld. counsel for the both the accused persons and also gone through the material on record as well as authorities cited by them.

Ld. Public Prosecutor submitted that IO recorded disclosure statement of the accused Mukesh who pointed out the place where he kept the knives used in causing murder of Smt. Charanjeet Kaur and

same has been recovered from guardroom. Accused Vijay Kumar Yadav was also arrested and a cash of Rs. 22.13 lacks was recovered from his rented house NO. D-234, Gali NO. 15, Gamri Extension, Bhajanpura, Delhi. The blood stained clothes of accused persons were recovered on their instance. The knife in the sealed pullanda and cloth of deceased were sent to the doctors who had opined that the injury could be caused with the recovered knives and there were corresponding cuts marks on the clothes of the deceased. PW1 J.P. Singh and PW3 Gurcharan Singh stated that accused Mukesh Kumar Yadav was working as domestic servant and was staying t here and accused Vijay Kumar was working in the house of the complainant as painter in those days. Accused Mukesh Kumar Yadav with a view to mislead the complainant had made a concocted version that some masked men had come to the house of complainant and stabbed the Bibiji Charanjeet Kaur wife of the complainant. IT is highly improbable to believe that masked men had every entered into the house and went away without committing any robbery, whereas the accused Mukesh Kumar Yadav had made a confession and admitted that he alongwith Vijay Kumar had committed the murder of Charanjeet Kaur and have robbed the amount from the drawer of the almirah. He led the police party and got recovered the knives from the guard room where he has concealed. Accused Vijay Kumar was arrested and he also made disclosure statement and got recovered 22.13 lacks from the shelves of the rented room of house NO. D-234, Gali NO. 15, Gamri Extension Bhajanpura, Delhi. Where he had concealed. He also got recovered mobile phone which he had purchased from the robbed money. It is also revealed during the deposition of the prosecution witnesses that there is only one main entry /exit iron gate of 12 feet height under the lock and key of accused Mukesh Kumar. There is no other separate entry/exit gate within four para feet wall of the building through which the masked men can make the entry and ran away after committing the crime. The recovery of the weapon of the offence, blood stained cloths and currency notes was recovered from the possession of accused persons on th eir instance. These facts and the recovery clearly point out the involvement of both the accused in commission of serious offence which was within their knowledge otherwise they would not have got recovered the weapon and the robbed money.

It is further submitted that blood stained clothes of both the accused were recovered, which they were wearing on the day of offence and these clothes were stained with the blood of the deceased. The blood of the deceased was compared with the blood stained clothes of the accused persons and the PW33 V. Shankaranaryanan gave the opinion that the blood on the slawar Ex. 3C shirt 4A, pant 4B, T shirt 5A and pant 5B were having the same blood ground B. which is of the deceased Charanjeet Kaur and he gave his report vide Ex. PW33/C. It is further contended that police had lifted chance print Q1 to Q6 from the spot and these were sent for comparison and the PW13 N.K. Sharma had clearly given h is opinion that the Q-2 identified with S-2 on the finger impression of Charanjeet Kaur and the Q-3 chance print was identified in the left palm F-1 on accused Mukesh Yadav and the said report is ex. PW13/A and PW13/B. PW19 Pradeep Verma had lifted chance print from the spot vide chance prints of accused resemble with the chance print Q-3 and it clearly indicates that he was involved in the murder of Charanjeet Kaur otherwise his prints would not appeared there.

It is further submitted that both the accused had disclosed that after murdering the deceased Charanjeet Kaur, they have taken the cash from the drawer of the almirah and the same as got recovered on pointing out of accused Vijay Kumar from his rented house, which clearly indicates

that the said amount was robbed from the house of the complainant after killing his wife and the complainant has identified the recovered note and also produced the documents taken vide memo Ex. PW3/B and Ld. MM was pleased to release the said amount after taking the photographs of the notes as these belongs to the complainant. Both the accused could not explain as to how such a huge amount had passed into their hands and the same was recovered. It is clearly indicates that both the accused after committed murder removed the cash from the almirah and the same was recovered on the pointing of the accused persons which is admissible u/s 27 of the Evidence Act.

It is further contended that it is amply proved that the accused Mukesh Kumar was working there as domestic servant and accused Vijay Kumar was working as painter and both the accused have admitted during their statement u/s 313 Cr.P.C and have also admitted in the last question of 313 Cr.P.C. that the accused Mukesh was employed in the house of Charanjeet Kaur and the accused Vijay working as painter there. It leaves no doubt that both the accused were present on the day of incident in the house and this fact get corroboration from the statement of PW1 J.P. Singh, PW3 Gurcharan Singh, PW4 Suresh, PW9 Jai Shree, PW10 Parvinder Kaur, PW28 Manish. The oral evidence given by these PWs clearly prove that they were working in the said place and the admission of the accused also further strengthen the case of the prosecution that there was no one else except these two accused who have killed the deceased Charanjeet Kaur and robbed the Govt. currency of Rs. 25 lacs. Further from the testimony of aforesaid material witnesses it clearly revealed that both the accused have made a disclosure statement and got recovered knives and the cash on their pointing out. Merely non joining of public person during the disclosure statement of both the accused or at the time of recovery does not cast any doubt on the fair investigation of the police officers who have no inimical terms with the accused persons, they have done the fair investigation and have made efforts to join the public persons but no one could be joined due to paucity of time and availability of the witnesses. The prosecution version cannot be thrown out merely on the ground that no public person was joined during the disclosure statement of accused or at the time of the recovery of the weapon of offence and the recovery of robbed currency notes. It was within the knowledge of the accused persons as to where they had concealed the weapon of offence after causing death of the deceased and where they have concealed the robbed amount after committing the robbery from the house of the complainant. The accused could not explain as to how such huge amount had passed into their hands as no one will plant such a huge amount to involve the accused persons. The recovery of amount on the pointing of the accused clearly connect them in the commission of this crime and the said recovery completes the chain. It is worthwhile to note that the accused Mukesh Yadav had the keys of the lock of the said house and the police reached there. The house was locked from outside and opened with the help of key in possession of accused Mukesh Kumar. It clearly indicates that accused Mukesh along with Vijay had robbed the house after committed the murder and went to mislead the complainant by concocting a false story. It masked persons or other person had committed murder, they would have taken the robbed amount and would have left the house unlocked. It clearly indicates that accused Mukesh and Vijay had committed the murder and Mukesh had the keys of the house and had locked the same. The presence of Mukesh is also established by PW11 Amit Kumar who was sent by complainant Gurcharan Singh at 6.30 pm to bring some files from his house and he went there and collected the file from accused Mukesh and returned to the office of the complainant. At that time, accused Mukesh was present in the house. When the complainant tried to contact his wife again at 7.15 or

7.45 pm, there was no response on telephone and the accused came to the office of the complainant at 8 pm with a concocted version that one masked person has caused stab injuries to Bibiji i.e. his wife. It clearly indicates that he was mastermind and knew that huge amount was lying in the house and had killed the complainant's wife in connivance with Vijay Kumar. Ld. Public Prosecutor also relied upon case titled as

- (i) 2010 Crl. L.J. 85, Delhi High court Ramesh Kumar Vs. State,
- (ii) 2010 CrL. J.J. 299, Sana @ Sanatan @ Dhaneswar Samal Vs. State of Orissa.
- (iii) 2010 Crl. L.J. 411, Raju Chettri & Anr. Vs. State of Sikkim.
- (iv) 2009 Crl. L.J. 2744, State of West Bengal Vs. Nikhil Chandra Mondal.
- (v) 2009 Crl. L.J. 2820 Krishna Ghosh Vs. State of West Bengal.
- (vi) 2010 Crl. L.J. 1086, Satpal Singh Bedi Vs. State of Delhi.
- (vii) 2009 Crl. L.J. 2248, Narayan Vs. State of Rajasthan.
- (viii) 2009 Crl. L.J. 4095, Takadir Samsuddin Sheikh Vs. State of Gujarat and Anr.

With these submission it is prayed to convict the accused persons with severe punishment so that the other public persons could learn a lesson from their act and accused persons be awarded deterrent punishment who had killed the old aged undefendant innocent helpless lady.

Per contra LD. Counsel for the accused persons. contended that the alleged incident has been taken on 3.10.2006 and on receipt of DD No. 29A regarding murder at 12, Raj Niwas Marg, Civil Lines, Delhi. Accused Mukesh Kumar Yadav and Vijay Kumar was arrested on 4.10.2006. The disclosure statement of the accused persons was recorded and the alleged incriminating articles like currency notes , mobile weapon, blood stained cloths etc were recovered and seizure memo was prepared. Crime team was called, chance print was lifted form the place of incident. Throughout all the investigation no public witness has been cited at any occasion except to few interested witnesses . All the public witnesses as cited and examined and are interested witness for one reason or other. PW1 J.P. Singh is the son of deceased, he deposed that on the next day of morning the Investigating Officer of the case came to his residence with Constable. Accused Mukesh admitted his guilt before the police by making a disclosure statement. Police arrested both accused persons and their personal search was conducted. Mukesh pointing out place of occurrence then he led the police party to the guard room near main gate where he had hidden both the knives. He took out both the knives lying on the wooden plank. IO along with police officer and accused Mukesh proceeded to Bhajanpura in Gamri Village where accused Vijay was staying as a tenant. Accused Vijay showed the place where the money was lying. The accused Vijay Kumar was also arrested and took out currency notes amount to Rs. 22.13 lacks from a drum by taking out a jute bag. Wrapped in two small turbans. The blood stained clothes of accused Vijay which were worn at the time of crime were also

seized along with one mobile phone from his pocket which he had purchased against receipt. The money recovered from the possession of the accused was in fact kept by them at their residence for the purpose of purchase of some property. No public witness joined in the investigation. It will adversely effect the case of the prosecution as per law of land. It is admitted fact that H.No. D- 234, Gamri Village in street NO. 15 where many house were situated and people were residing there, but none was joined. The recovery of currency note for a sum of rs. 22.13 lack was kept in a open drum without any lock and no person will kept such a huge amount in his room if he is guilty mind. It further submitted that it is also submitted that no site plan of place of recovery of government currency is prepared by the IO. He admitted that Mukesh admitted guilt before police not in his presence.

PW3 Gurcharan Singh is husband of the deceased who stated that Mukesh has been working in his house for approximately 1 1/2 months prior to the incident and at 6 pm, he talked his wife Smt. Charanjeet Kaur about two urgent files and about 6.30 pm he sent his employee Amit to his house who returned to his shop around 7 pm with both the file. On receiving the information about stabbing of his wife from Mukesh he thereupon with Suresh one girl Parminder Kaur and accused Mukesh himself came down to his residence in car. It is submitted that Parminder Kaur did not signed any document. Hence her presence at the spot can be easily ruled out. It is also highly improbable that after hearing the news of death of his wife he firstly went to the police station instead of visit the house first. It is stated by this witness that the receiver of a telephone was hanging and touching the ground and it is stated by the witness Gurcharan Singh that bell of the telephone was ringing, but no one was responding. It is submitted that when receiver was not properly put on the telephone no bell can be rang. He also stated that the money earned from their business used to be given to his wife. Hence he has no knowledge, if his wife has spent the amount for herself or for any other purposes. He has further stated that Mukesh used to stay either in kitchen or in servant room. It is admitted that accused Mukesh had a room in the upper basement of his house. It means he was not residing in the guard room from where recovery of knives has been shown. He has further stated that he has given statement to the IO. On 6.10.2006 at his residence, but no statement of this witness dated 6.10.2006 is placed on record, because of the reason that the statement was not supporting the prosecution case and it might have changed later on or voluntarily not placed on record. He has also admitted that he has not given the number of currency notes or any description of the currency notes. He has also admitted that no recovery of currency notes ever took place in his presence.

It is further contended by Ld. Counsel for accused persons that PW4 Suresh is employee of Gurcharan Singh hence his evidence cannot be relied upon. PW5 Lakh Charan stated that he is landlord of B-234, Gali NO. 15, Gamri Exten. Bhajanpura, but he did not place any documents on the record that he is landlord of the said house and neither he placed any documents regarding tenancy of Vijay such as any rent receipt or any agreement etc and it is not proved that Vijay was his tenant and he has given the statement to the police later on , on 6.10.2006.

It is further contended by Ld. Counsel for accused that PW6 Bharat Bhushan Prop. Of M/s Krishna Telecoms Center who stated that he issued receipt Ex. PW-1 which bears the signature at point A and the said phone was sold to Rai Telecoms on 3.10.2006. It is not stated by this witness accused

Vijay came to purchased the said mobile, hence it is not proved on record that mobile phone was sold to accused Vijay and Vijay has any connection with this mobile. Statement u/s 161 Cr.P.C has been recorded on 3.11.2006 much later after one month of the arrest of the accused. Further PW7 Rajiv Kumar Rai, shopkeeper who purchased mobile from Krishana telecoms Center stated that on 3.10.2006 accused Sonu Yadav came to his shop at about 8.30 pm and wanted to purchase Tata Hair immediately. He did not have Tata Hailer at his shop. HE alongwith accused went to Krishna telecoms Center, Main market Bhajanpura where from he got his purchased Tata mobile phone for Rs. 1350/- and he charged Rs. 50/- as his commission. It is highly improbable that a shopkeeper will entertain an unknown customer only for Rs. 50/- and leaves his shop unattended for half an hour by keep his shutter down and if accused Vijay purchased the mobile why receipt of mobile was not issued in the name of Vijay, hence it is not proved on record that any mobile was purchased by the accused Vijay and witness is manipulated later on and accused has been falsely implicated in this case and his statement u/s 161 is recorded on 7.10.2006. PW8 Dr. Vijay Khari stated that he examined patient Mukesh brought by Ct. Om Rai. He was having injuries on either finger and the nature of injuries was simple sharp. PW9 Jai Shree , maid servant has clearly stated the she was not present at the time of incident and hence she does not know who had caused murder of deceased Charanjeet Kaur. PW10 Parvinder Kaur, known to Sh. Gurcharan Singh her statement was recorded on 4.10.2006 and if she was present on the day of incident i.e. on 3.10.2006 why her statement was not recorded or why she was not joined during the investigation. PW11 Amit Kumar servant of Sh. Gurcharan Singh was also examined as PW20 and his statement was recorded on 13.10.2006 after 10 days of the incident, only in order to fill up the lacuna and no explanations given for such delay. If he was present on the day of incident and he suspected something abnormal why he did not reported the matter to his employer Sh. Gurcharan Singh hence his evidence cannot be relied upon. PW13 Sh. N.K. Sharma finger print expert gave his report on the basis of chance print and finger print of accused Mukesh Kumar. It is submitted that admittedly Mukesh Kumar was the servant in the house and was present on the spot. According to prosecution case he informed Sh. Gurcharan Singh, husband of the deceased and there is nothing abnormal if his finger prints present, because he was serving the deceased and her family. PW17 HC Surender Kumar MHC(M) who produced record from Mal Khana register where it is clearly mentioned that the currency notes were in yellow potli and black potli. While recovery memo shows potlies of black and blue colour. Certainly these are not the same potlies which were shown to be recovered from the accused persons. This only fact shows that recoveries are planted. According to Malkhana register the amount is released on 11.10.06 vide MM order while PW3 Sh. Gurcharan Singh gave documents and details of currency notes on 29.11.2006 and till 11.10.2006 no description of any currency notes or documents regarding possession of currency notes are not given to the investigating agency. Government currency notes after recovery can be claimed by any person that these notes belong to him. If documents were genuine and were not manipulated, there is no explanation for such delay. It means document were planted and therefrom cannot be relied upon. PW18 Ct. Anil who took the case property of Malkhana to FSL but no RC is filed on record which is mandatory provision in Punjab Police Rules that no case property can be taken away from the PS without road certificate. And if the case property have been taken away from Mal Khana to FSL then definitely a road certificate must be on record. In the absence of R.C it cannot be presumed that the case property was taken out from the Malkhana and was deposited to the FSL.

It is further contended by Ld. Counsel for accused that PW23 Insp. Vipin Kumar this witness is also planted witness. His statement u/s 161 Cr.P.C does not bear any date so it cannot be said on which date he joined the investigation and on which his statement u/s 161 Cr.P.C was recorded. If statement u/s 161 Cr.P.C is not recorded he cannot be examined in the court, hence his statement is liable to be rejected and cannot be relied upon. PW23 in his cross examination deposed that Mukesh Kumar remained in his custody from 9 am to 2.30 pm but no DD entry was recorded in th is regard. He has also admitted that he was not given any version in writing for disclosure of the accused. He further admitted that nobody was sent to STA Office to call the official from there to join in the investigation and he further admitted that they had gone in their private vehicles to the place of incident. One car belong to her and there was one government motorcycle. He cannot tell who had accompanied her in the car but accused Mukesh was with her in the car. He was driving the car. Mukesh was in custody of their police officials . He cannot tell specific name. He stated that accused Vijay took out the bag from the cement slab made in the room. It was not locked in a almirah or box. It is highly improbable that a person will leave such a big amount lacks of rupees in an open place and kept them in his own room and will wait for police to come and recover the same from him, while he has sufficient time to dispose/hide the amount. PW28 Manish servant in other Kothi, his statement u/s 161 Cr.P.C is recorded on 9.10.2006 much later aft er the incident and even after the arrest of the accused persons.

It is further contended that prosecution has not proved its case against the accused persons beyond all reasonable doubt . Chain is incomplete and prosecution is miserably failed to prove its case. It is very strange that accused has been arrested on 4.10.2006 and said recovery is effected on 4.10.2006 and IO and other police officials knows that they are going to recover lacks of rupees from the accused persons but they made no efforts to join any independent witness either from the neighbourhood or from the locality, although they are present. Further it is highly improbable that accused will keep their weapons blood stained clothes and currency notes till next day and will not remove although they have sufficient time for the same. It is also highly improbably that if accused Mukesh had stabbed the deceased he would have gone to inform the incident to the husband of the deceased and shown him injuries which he received from Naqabposh person who has stabbed deceased and he also received injuries while he tried to stop them. It is also highly improbable that he will leave the knives, weapon of offence in the same house while he was going outside the house to inform the husband of the deceased and it was possible to throw the knives in the way far away from the house from where none could recover the weapon but the accused Mukesh hides the knives in guard room. The disclosure statement is alleged to have given when accused persons are in police custody and it is very simple to made their signature on any statement by using third degree treatment. It is highly improbable that a person who got Rs. 22.13 lacks after murdering a lady, will leave the same in room openly without any lock. It is also law of the land that benefit of doubt goes to the accused. According to the prosecution case accused Mukesh received fresh injuries but there is no explanation by the prosecution for the same. It is further highly improbable that after lotting such a big amount accused will go directly to purchase a mobile, keeping such a big amount with him and when he has lacs of rupees with him he will purchased a mobile only for Rs. 1350/- . Ld. Defence counsel has also relied upon cases:

- (i) Liddu @ Salook Singh Vs. State of Haryana1994(1) RCR 129,

(ii)Kora Ghasi Vs. State of Orrisa 1983(1) Crimes 984(SC),

(iii) Ramanuj Vs. State of Rajasthan, 1996 Crl.L.J.1790(Raj.)

(iv)Nachhattar Singh Vs. State of Punjab, 1999(2)RCR (Cri) 632(P&H).

with these submission LD. Defence counsel requested to acquit the accused persons from the charges levelled against them.

Having regard to the submission made by Ld. Public Prosecution, and Ld. Defence counsel as well as the authority cited, the case of the prosecution is based on circumstantial evidence. The accused persons in their deposition u/s 313 Cr.P.C have admitted their arrest. However rest of the interrogatory made by them, are denied as the same are incorrect and false with contention that it is a false case they have been falsely implicated in this case as they are innocent , they did not commit any murder or robbery. Real culprit could not found and recovery has been planted upon them.

The circumstantial evidence led against the accused that accused Mukesh Kumar Yadav had keys of lock of the said house and as and when anyone come from the out side the house and go from the house it duty of accused Mukesh Kumar to open the main gate after unlocking with help of keys which was in his possession since the accused Mukesh Yadav was working as domestic servant and he was available there with accused Vijay Kumar who was working their as painter in those days. Accused Mukesh Yadav had made confession in which he admitted that he alongwith accused Vijay Kumar committed murder of Charanjeet Kaur and had robbed the amount. He led the police party and recovered the knife from guard room. He also made disclosure statement regarding to his associate accused Vijay Kumar who has actively participate in the commission of crime and looting the sum of Rs. 25 lacks after murdering the deceased Charanjeet Kaur. On the basis of the disclosure statement accused Mukesh Yadav let the police party to the house of Vijay Kumar Yadav who is living at gali No. 15 at D/234, Gamari Extn. Bhajanpura where he got recovered the mobile phone which he purchased form the robbed money. The sum of Rs. 22.13 lacks from the rented room. Both accused persons have also got recovered the blood stained cloths which they were wearing at the time of committing the said crime. Blood of deceased was compared with the blood stained cloths of the accused persons by PW33 Sh. V. Sankaranaryanan opined that as per the serological report the blood stains Ex. No. 3C(Salwar) 4A (Shirt), 4B (Pants) 5A (T-shirt), 5B (Pants), 15 blood stained gauze showed reactions for human blood group 'B'. his report is Ex. PW33/C. The opinion on the finger prints from the accused Mukesh Kumar was compared with the chance print and both are found to be identical report to th is effect is ex. PW13B has been proved by PW13 N.K. Sharma. PW19 Pradeep Verma has also lifted the chance print from the spot vide his report Ex. PW19/A and th chance print of the accused resemble with the chance print as Q-3 which also proved identical.

It is well settled law by the catena of decisions of the Supreme Court that for proving the guilt of commission of an offence under section 302, the prosecution must lead evidence to connect all links in the chain so as to clearly point the guilt of the accused alone and nobody else. For a crime to be proved, it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the court those persons who

had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. To put it differently, circumstantial evidence is not direct to the point in issue but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together they form a chain of circumstances from which the existence of the principal fact can be legally inferred or presumed. It has been consistently laid down by this court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn with the principal fact sought to be inferred from those circumstances.

In the instance case accused Mukesh Kumar Yadav is very much present through out from 3.10.2006 and each and every event was well aware by him and the injury on his little finger is not enough to brought an inference of innocence against him that he was having only minor sharp injuries while in scuffled with three four muffled face robbers. On the opposite side we look into the other circumstances that the deceased Charanjeet Kaur having sustained 35 stab injuries and the story set up by the accused to prove that accused was fighting with them to save her land lady from the assailants as well as for her valuable money of Rs. 25 lakhs. It is improbable that the assailant will receive the simple injures on his little finger in scuffle he might have receive few more injured on his person while fighting with the three four robbers persons since the accrued has taken defence that some other robbers has come entered into the house and robbed house as well as assaulted the deceased with the grievous injuries and the presence of accused Mukesh Kumar was not denied during the period of assaulting the deceased and robbery being committed therefore, it is to be proved by accused and in what manner the other then him, has entered into the house and in what manner they have entered or exit. The accused Mukesh Kumar Yadav made a confession statement and admitted that he alongwith accused Vijay Kumar committed murder of Charanjeet Kaur and robbed the amount. He also led the police party to get recovered the knives from the guard room. Accused Vijay Kumar was also arrested on the instance of accused Mukesh Kumar Yadav. He also made a disclosure statement and got recovered Rs. 22.13 lacs and blood stained cloths. The finger print was compared with the chance print. The knife was got recovered on the instance of the accused persons and expert opinion was also obtained by the PW30 Dr. S.Lal.

Further PW30 Dr. S.Lal conducted the post mortem on the dead body of deceased opined the cause of death was hemorrhagic shock due to anti mortem injury to lung and abdominal organs. All injuries were anti mortem in nature and caused by single sharp edged weapon and recent in duration. The injuries No. 25,26,27,28,29,30,31,32,33,34 and 35 were sufficient to death in ordinary course of nature individually and collectively both. Dr. S. Lal has also examined the weapon of offence, which was produced before him in sealed pullandas duly sealed with the seal of KKU and deposed that on opening the pullanda 1 and 2 , two knives were taken out from the third pullanda cloths of the deceased which was a pink salwar, pink green printed Kameej, white bra and white pink line penty total four clothes were found as observed by him in the report Ex. PW30/A1. He had examined the knives and the clothes and prepared the sketches of the knives Ex. PW30/B and Ex. PW30/C and prepared separate reports regarding examination of knifes Ex. PW30/D and cut make

on the clothes of deceased Ex. PW30/E and thereafter he had opined that injuries No.1,2,3,4,5,6,7,8,12,13,14,15,16,17,18,19,20,21,22,23 and 24 were possible to cause by both the knives of parcel No. 1 and 2, the injuries No. 9,10,11,25,26,27,28,29,30,31,34, and 35 were possible to be caused by knife of parcel No. 1. Injuries No. 32 and 33 were possibly to be caused by knife of parcel No. 2. After examination of clothes the cut marks present on clothes were corresponding to stab injuries/incised wound present over body mentioned in the post mortem report. After the examination of exhibits same were resealed with the seal of AKJ mortuary seal and handed over to IO with the sample seal. The opinion of the doctor regarding the cause of death of the deceased Charanjeet Kaur with the knife blow as recovered is consistent and firm which co-relate with the post mortem report and deposition of the prosecution witnesses against the accused persons.

Importance and primacy should be given to the orality of the trial process. Again there is no irrebuttable presumption that a doctor is always a truthful witness. His evidence also requires to be appreciated like that of any other witness. Eye witnesses account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence including medical evidence as the sole touchstone for the test of such credibility. It is trite law that minor variations between medical evidence and oral evidence do not take away the primacy of the latter. Unless medical evidence in its terms goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eye witnesses the testimony of eye witness cannot be thrown out. Medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference.

In a case titled as Ranesh Kumar @ Rameshwar Vs. State 2010 CRI.L.J.85 wherein in para No. 25 it has been observed that "

Pertaining to the recovery of Ex. P-12 to E x. P-16, merely because a public witness was not associated with the recovery does not render untruthful the testimony of the police officers viz. SI Lalit Mohan and Insp. Mahesh Kumar, who have proved the information given by the appellant which led to the recovery of the said articles. The recovery memos Ex. PW7/P and Ex. PW7/Q pertaining to the said articles show that each one of them was not visible to the naked eye and was hidden in the bushes and the appellant himself retrieved the same from within the bushes. Thus, we hold that the recoveries are not tainted and inspire confidence because but for the appellant the Investigating Officer could not have laid his hand thereon. Human blood being detected on all the exhibits with further fact of blood group being detected as 'A' on Ex. P-16, which was the blood group of the deceased, are facts which are relevant and incriminatory, albeit with minimal weightage to be given to them. It is settled law that issue of what weightage has to be given to a piece of evidence is distinct from the issue whether the evidence is relevant, admissible and incriminatory. Similarly, same would be the position with respect to the FSL report Ex. PW11/B as per which hair recovered from the darati were similar to the hair Ex. P-5 Though not conclusive evidence that either the blood on the pyjama recovered at the instance of the

appellant or the hair on the darati recovered at the instance of the appellant were positively those of the deceased, the report is suggestive of the possibility of the same being the blood and the possibility of the same being the blood and the hair respectively of the deceased and in relation to the weightage to be given, same is determinative of a lesser degree of inculpatory evidence requiring less weightage to be given to said evidence."

In the instant case recovery of knife at the instance of the accused persons was effected from the Guard Room which can be easily accessible by the other public persons. The positive report was also with respect to the blood sample of the deceased and the blood group on the recovered cloths of the accused. The postmortem report of the deceased opined by doctor who conducted the postmortem as well as the report of serological and forensic expert are completing the chain of circumstances which shows that the accused persons are real culprits.

As regarding the motive of committing the murder, it has been observed in case titled Ramesh Kumar Vs. State (Supra) that " The legal principle being, that conduct of an accused is relevant and admissible evidence under section 8 of the Evidence Act. Where the accused tries to shield himself by producing false evidence, the very production of false evidence is indicative of a guilty mind.

In the present case the accused Mukesh Kumar made a disclosure statement as regarding his associate for commission of the crime by the co accused Vijay Kumar and the Vijay Kumar also made disclosure statement who got recovered the blood stained cloths and the Rs. 22.13 lacs. Here in the present case the accused persons have motive to robbed the sum lying in the almirah. The disclosure statement of the accused persons led the recovery of the same. However, the absence of proof does not ipso facto result in the acquittal of the accused. The motive is the ultimate end which a person hopes to achieve whereas intention is the immediate effect of his act. Motive is something which prompts a person to form an intention. The motive behind a crime is a relevant fact on which evidence can be given.

Wills States:-" There is hardly any voluntary act without motive. If any act is found to be totally devoid of motive, not unnaturally is one prone to attribute it to unsound mind. Man being a creature of passions and affections and fitted with reason and choice, there is scarcely a human act not motivated by something or other, however, elusive and undetectable the underlying motive may sometimes happen to be. The commonest inducement to act are the desire of revenging some real or fancied wrong of getting rid of a rial or an obnoxious connection, of escaping from the pressure of pecuniary or other obligations or burden, of obtaining plunder or other coveted object of preserving reputation, either that of general character or the conventional reputation of profession or sex, or of gratifying some other selfish or malignant passion. "

There are enough evidence which is proved the motive of offence against the accused persons by oral and documentary evidence. Statement of accused persons led the recovery of the weapon, blood stained cloths and currency notes. The accused persons were well known that there was a huge amount was lying in the house of the complainant, which clearly indicates that the mastermind of the accused was charged

and killed the complainant's wife in connivance with associate Vijay Kumar who got recovered the robbed amount. In case titled as 2010 Crl. L.J. 411, Raju Chettri & Anrs. Vas. State of Sikkim, wherein it has been observed that " Section 27 evidence as to recovery credibility evidence showing that accused persons had voluntarily made disclosure statement through investigating officer who has recorded it- use of force or coercion has not in any manner been established by accused persons- disclosure statements made by them and discover of incriminating articles on basis thereon-form a complete chain point at guilty of accused persons of them having committed crime.

The legal position pertaining to joint disclosure statements was discussed by Supreme Court in the decision reported as State Vs Navjot Sandhu 2005 VI AD (S.C) 545=AIR 2005 SC 3820 in following terms- "Before parting with the discussion on the subject of confessions under Section 27, we may briefly refer to the legal position as regards joint disclosures. This point assumes relevance in the context of such disclosure made by the first two accused viz. Afzal and Shaukat. The admissibility of information said to have been furnished b;y both of them leading to the discovery of the hideouts of the deceased terrorists and the recovery of a laptop compute, a mobile phone and cash of Rs.10 lacs from the truck in which they were found at Srinagar is in issue. Learned senior counsel Mr. Shanti Bhushan and Mr. Sushil Kumar appearing for the accused contend, as was contended before the High Court, that the disclosure and pointing out attributed to both cannot fall within the Ken of Section27, whereas it is the contention of Mr. Gopal Subramanium that there is no taboo against the admission of such information as incriminating evidence against both the informants/accused. Some of the High Courts have taken the view that the wording "a person" excludes the applicability of the Section to more than one person. But, that is too narrow a view to be taken. Joint disclosures to be more accurate, simultaneous disclosures, per se, are not inadmissible under Section 27. 'Aperson accused'need not necessarily be a single person, but it could be plurality of accused. It seems to us that the real reason for not acting upon the joint disclosures by taking resort to Section 27 is the inherent difficulty in placing reliance on such information supposed to have emerged from the mouths of two or more accused at a time. In fact, joint or simultaneous disclosure is myth, because two or more accused person would not have uttered informative words in a chorus. At best, one person would have made the statement orally and the other person would have stated so substantially in similar terms a few second or minutes later, or the second person would have given unequivocal nod to what has been said by the first person. Or, two persons in custody ma be interrogated separately and simultaneously and both of them m furnish similar information leading to the discovery of fact. Or, in rare cases, both the accused may reduce the information into writing and hand over the written notes to the police officer at the same time. We do not think that such disclosures by two or more persons in police custody go out of the purview of Section 27 altogether. If information is given one after the other without any break almost simultaneously, and if such information is followed up by pointing out the material ting b;y both of

them, we find no good reason to eschew such evidence from the regime of Section 27. However, there may be practical difficulties in placing reliance of such evidence. It may be difficult for the witness (generally the police officer), to depose which accused spoke what words and in what sequence. In other words the deposition in regard to the information given by the two accused may be exposed to criticism from the stand point of credibility and its nexus with discovery. Admissibility and credibility are two distinct aspects, as pointed out by Mr. Gopal Subramanium. Whether and to what extent such a simultaneous disclosure could be relied upon by the Court is really a matter of evaluation of evidence. With these preparatory remarks, we have to refer to two decisions of this Court which are relied upon by the learned defence counsel."

Ld. Counsel for accused has pointed out several lacuna in the investigation and has submitted that the case of prosecution cannot be accepted as it is culmination of tainted investigation. It has been submitted that there are several lacunae in the investigation and the Investigation Officer failed to carry out the investigation on the expected lines. Investigation is the main component of the Criminal Justice systems. Fair investigation is the right of the accused and tainted investigation is bound to prejudice the accused. It is also a matter of common knowledge that investigating agency sometime fails to carry out the investigation as per norms. The investigation part in the Criminal Justice system requires lot of improvement. The Scientific investigation is also the need of the hour. In the present case also there are certain lacuna in the investigation but no further investigation was carried out in this regard. However, rejecting the case of the prosecution merely on the basis of defective investigation would amount to paying the premium for the faults of an Investigating Officer. It would also amount to playing into the hands of Investigation Officer. Reference can be made to Karnal Singh Vs. State of M.P. (1995) 5 SCC 518. In this case the apex court inter alia held as under:-

"Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused persons solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer, if the investigation is designedly defective"

It has also been held time and again by the superior courts that in the case of defective investigation the case of the prosecution should be examined dehors such omissions otherwise the mischief done deliberately would be perpetuated and justice could be denied to the complainant party. Reference can be made to Ram Bihar Yadav Vs. State of Bihar (1994) 4 SCC 517. In Dhanaj Singh Vs. State of Punjab AIR 2004 SC 1920, the apex court dealt with plea of tainted investigation and inter alia held as under:- " In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective."

In Paras Yadav and others Vs. State of Bihar (1999 (2) SCC

126) it was held that " if the lapse or omission is committed by the investigating agency, the prosecutions evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the Courts; otherwise the designed mischief would be perpetuated and justice could be denied to the complainant party."

It was also observed in Ram Bihari Yadava Vs. State of Bihar and others(1998 (4) SCC 517) that " if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law enforcing agency but also in the administration of justice"

It is contended by Defence Counsel that the PWs are in close relation of the deceased. Their testimony are not consistent and improbable. It is being suggested in the cross examination of PWs that they have deposed at the instance of police. I am not convinced with the defence of Ld. Defence Counsel that the witnesses are interested witnesses but their testimony in a serious type of case like murder cannot be possibly a ground to reject the evidence on record. The test of creditworthiness or acceptability ought to be the guiding factor and if so, question of raising an eyebrow on the reliability of witness being an interested witness would be futile in the evidence the evidence is otherwise acceptable, there ought not be any hindrance in the matter of prosecutor's success. The evidence must inspire confidence and in the event of unshaken credibility, there is no justifiable reason to reject the same as observed in a case titled as Alamgir V State (NCT of Delhi) AIR 2003 SC 282 . Hence, I am also not convinced with the contention of Ld. Defence Counsel that relative of the deceased have any motive to implicated the accused persons in the present case.

The defence Counsel while cross examined the witnesses and statement recorded u/s 313 Cr.P.C have give different two stories, one story by cross examining the witnesses suggested that the witnesses as deposited are interested witnesses and their depositing are made at the instance of police. On the other hand while recording the statement u/s 313 Cr.P.C, it has been suggested that the accused persons are innocent and they have been falsely implicated in this case. It is unsustainable that if the person like accused persons involved in the murder case of wife of his employer are innocent and why they have been implicated falsely. There is no specific explanation given by defence counsel of their involvement in this case. If there is anything in the mind of the Defence counsel he should brought the same on record. No doubt the essential burden of proving the case is upon the prosecution. But the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that act shall lie on any particular person. As defined in section 103 of the Indian Evidence Act.

In Dalip Singh and Ors. V The State of Punjab (AIR 1953 SC

364), The apex court while laying down the principle for appreciation of evidence of a witness, inter alia held as under: "A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to which to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty , but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to comb at what is so often put forwards in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to be governed by its own facts.

Hon'ble Supreme Court has followed the same principle in Gull Chand and Ors. V. State of Rajasthan (1974 (3) SCC 698) in which Vadivelu Thevar V. State of Madras (AIR 1957 SC 614) was also relied upon. In the present case the defence has not been able to bring any material on the record that the witnesses were interested to deposed against all the accused persons or they were having any enmity with the accused. The source of these witnesses also does not seem to be tainted at all.

Ld. Counsel for the accused persons has also pointed out that prosecution ha snot examined the material witness Ct. Raj Kumar who took the rukka to PS and PW Parshu Ram Singh who prepared the report Ex. PW33/A. To this effect it is observed in case titled as Girish Chandra Gupta and Kishore Kumar Prasad 2009 CRI.L.J. 2744, wherein it has been observed that " It is in this background that we have to consider the submission of Mr. Chakraborty, Ld. Counsel for the respondent, that the Chowkiddar, who had at the first instance noted the dead body of the deceased, has not been examined. It is true that the Chowkidar had not been examined but we are unable to see any significance nor could Mr. Chakraborty, Ld. Counsel for the respondent, indicate any reason as to why was his evidence material for a just decision of the case. We therefore, reject this submission of Mr. Chakraborty."

In the present case the FSL report prepared by Parshuram Singh and which has been duly proved by PW33 Mr. V. Sankaranaryanan who have seen the report of Physics dated 29.4.07 prepared by Parshuram Singh, SSO(Physics), FSL, Delhi and had identified his handwriting and signature on the report as he had seen him writing and signing in the course of his duties. As such the report Ex. PW33/C is proved in accordance with law. The registration of FIR in the present case has been proved by PW12 HC Satish Kumar who was working as Duty Officer and lodged the FIR on the basis of Rukka sent by Insp. Kanchan Kumar.

Under section 394/397 for which the accused persons are also facing charges. Use of a deadly weapon or causing of grievous hurt or attempting to cause death or grievous hurt for that reason no doubt the provision postulates only the individual act of the accused to be relevant to attract section

397. Here in the present case the weapon used by accused persons in stabbing the deceased Charanjeet Kaur is a deadly weapon which cause death of the Charanjeet Kaur. In case titled as Phool Kumar V Delhi Administration AIR 1975 SC 905 wherein it has been observed that " The accused armed with a knife and one of his associates armed with a small gun terrorized the employees of a service station to hand over the keys and after opening the office decamped with the cash. It was held that to bring the case within the purview of section 397 brandishing of the knife or causing of grievous hurt was not necessary. The anomaly created by the word " uses" in section 397 and is armed in section 398 is resolved if the two terms are given an identical meaning. A reasonable explanation existed for the use of the different expression according to the court. U/s 397 where the offence of robbery was committed by an offender armed with a deadly weapon which was within vision of the victim and capable of creating terror in his mind the offender must be deemed to have used the deadly weapon.

Hence in view of the aforesaid discussion and evaluation of the evidence it come to the following conclusion:-

(i) It is proved by ocular evidence that the accused Mukesh Kumar Yadav was working as domestic help of complainant PW Gurcharan Singh and accused Vijay Kumar did the painting work for about 15 days at the complainant's house.

The presence of the accused persons on the fateful day is not only admitted by disclosure statement but also by the ocular evidence of PW1 J.P. Singh, PW3 Gurcharan Singh, PW4 Suresh, PW10 Parvinder Kaur, PW11 Amit KUmar and PW28 Mainish KUmar.

(ii) The accused Mukesh Kumar Yadav initially himself called the complainant and informed about the crime and open the main gate with the key in his possession.

(iii)On the basis of the disclosure statement of the accused Mukesh Kumar Yadav two knives (weapon of offence) and his blood stained cloths recovered from the guard room.

(iv) Both the accused persons are well acquainted with each other and accused Mukesh Kumar Yadav hatched with the planning to robbed the cash and cause death of Charanjeet Kaur. The accused Vijay arrested on the disclosure statement of accused Mukesh. One mobile phone, recovery of government currency notes of rs. 22.13 lacs, blood stained cloths got recovered on the instance of the accused Vijay.

(v)The finger prints of the accused Mukesh got tallied with the chance prints lifted from the scene of crime.

(vi) The PW30 Dr. S.Lal proved the postmortem report and injury mark on the body of deceased Charanjeet Kaur are compared with the cut mark on the deceased cloth with weapon of offence and same were of the opinion to be caused by the both the knives as recovered on the instance of accused persons.

(vii) There is positive evidence available that the blood stained cloths of accused persons are tallying with the blood group of the deceased.

Hence in view of the aforesaid discussion and the ocular evidence led by prosecution with respect to convict the Mukesh Kumar Yadav and Vijay Kumar Yadav, offence punishable u/s 397/302/34 IPC has proved by prosecution beyond all reasonable doubt in the testimony of trustworthy, believable and corroborative evidence which inspired confidence and there is no oral or documentary evidence to disbelieve the prosecution witness in any manner whatsoever. Therefore, accused Mukesh Kumar Yadav S/o Raj Kishore Yadav and Vijay Kumar S/o Sh. Santosh Kumar Yadav are hereby convicted for offence punishable u/s 397/302/34 IPC.

ANNOUNCED IN THE OPEN COURT TODAY ON 26.04.2010 (SATINDER KUMAR GAUTAM)
ADDITIONAL SESSIONS JUDGE(WEST-04) DELHI