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**(2012) 06 PAT CK 0058**

**Patna High Court**

**Case No:** Criminal Appeal (DB) No. 92 of 1990

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| Sk. Maqbul Hussain @ Makli and Others | | APPELLANT |
| | Vs | |
| The State of Bihar | | RESPONDENT |

**Date of Decision:** June 28, 2012

**Acts Referred:**

- Evidence Act, 1872 - Section 27, 71
- Penal Code, 1860 (IPC) - Section 201, 302, 34

**Citation:** (2013) 1 PLJR 685

**Hon'ble Judges:** Mihir Kumar Jha, J; Aditya Kr. Trivedi, J

**Bench:** Division Bench

**Advocate:** Neeraj Kumar @ Sanidh and Rakesh Kumar Sinha, for the Appellant; Shiwesh Chandra Mishra, for the Respondent

**Judgement**

Mihir Kumar Jha, J.

This appeal is directed against the judgment of conviction u/s 302 /34 IPC and sentence of rigorous imprisonment for life of all the five appellants namely, Sk. Sakeer, Sk. Abbas, Sk. Makbul Hussein, Sk. Sannee @ Sonwa and Ganeshi Muni under Sections 302 /34 IPC who have also been separately convicted for the offences punishable u/s 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years. Both the sentences however, in the impugned judgment 21.2.1990 passed by Sessions Judge, Katihar in Sessions Case No. 22 of 1989 have been directed to run concurrently. The facts in brief giving rise to this appeal lie in a very narrow compass. An information was given by P.W. 12 (Abdul Mannan) on 20.10.1988, at his house to the police as with regard to an occurrence taking place in the night of 19/20th October, 1988 wherein it was alleged that when deceased Md. Ayub alongwith his brother Md. Raisuddin (P.W. 1) had gone to guard their own field in a place called Bhutahadhar, five appellants had questioned the right of the brother of the informant of fishing in the field as a result whereof some

verbal altercation had taken place but the matter had subsided, inasmuch as, deceased Ayub had sent his brother Raisuddin (P.W. 1) back home while he remained over there. The informant had stated that Md. Ayub, however, did not return even in the morning of the next day and as such the informant alongwith his brothers had started searching him and it was in course of such search at about 4 pm that they had met Md. Hanif (P.W. 4) and Sk. Jalil @ Zahir (P.W. 11) who had informed that in the previous night itself all the five appellants had indiscriminately assaulted Md. Ayub as a result whereof he had died. They had further disclosed to the informant that on protest made by them, the appellants had threatened both of them, namely PWs Md. Hanif (P.W. 4) and Sk. Jalil @ Zahir (P.W. 11) to keep quite else they would be also done to death. It is on the basis of this information allegedly given to the police that at the house of P.W. 1 (Raisuddin) Falka P.S. Case No. 186 of 1988 was instituted for the offences punishable under Sections 302 /201 /34 IPC.

2. The police having instituted the First Information Report had also taken up the investigation and it is said that in course of such investigation, the police officer came to know that one of the five appellants namely, Ganeshi Muni had been apprehended and was kept at the darwaza of the Mukhiya of the village and having received such information, the police officer is said to have reached at the darwaza of the Mukhiya where he claims to have arrested Ganeshi Muni. It is the case of the prosecution that Ganeshi Muni had made extra judicial, confession as with regard to killing of Md. Ayub by all the five appellants and also to have concealed his dead body at Karbaladhar. The Police Officer on the basis of such confession is said to have also gone alongwith accused Ganeshi Muni to Karbaladhar where the dead body of Md. Ayub was recovered from the place pointed out by appellant Ganeshi Muni.

3. Thus on the basis of such recovery, the police is also said to have completed its investigation and submitted its charge-sheet against all the five appellants whereafter the case being triable exclusively under the Court of Sessions was committed to the Court of Sessions whereafter the trial was completed leading to the aforementioned judgment of conviction and sentence.

4. Learned counsel for the appellant while assailing the impugned order has submitted that the same is unsustainable both on fact as also in law. In this regard, his main criticism of the impugned judgment is that the trial Court ought to have not accepted PW-4 and PW-11 as eye witnesses to the occurrence specially when the prosecution has given no explanation of the occurrence being reported to the police almost after 24 hours. He has further submitted that from a conjoint reading of the deposition of PW-4 and PW-11, it would be clear that they are not eye witnesses to the occurrence and if they are left out, there is nothing to connect the appellants as with regard to the main charge of offence punishable u/s 302 /34 IPC. In his opinion, the alleged extra judicial confession of appellant Ganeshi Muni is not admissible specially when his so-called confessional statement before the police has not been

proved. According to him, all the witnesses are highly interested witnesses who have concocted a false case against the appellants. A special emphasis was laid by him as with regard to suppression of the earliest information given to the police at the Police Station by P.W. 12, the informant and in this regard, he has also criticized the deposition of the Investigating Officer who claims to have arrived at the house of the Informant on a rumour only with regard to the deceased missing from his house for the last 24 hours. He has, accordingly, submitted that for such an event allegedly taking place in the month of October, 1988, the appellants who have remained on bail after the judgment of conviction dated 21.2.1990, should not now be subjected to conviction and sentence specially when the prosecution case itself is full of improbabilities and absurdities.

5. Per contra, learned APP appearing on behalf of State has submitted that the impugned judgment would require no interference by this Appellate Court, inasmuch as, the prosecution has unfolded the true story in which there are not two eye witnesses but also five hearsay witnesses who have fully supported the case. As with regard to the delay in lodging of the First Information Report, learned APP for the State has submitted that it was not necessary for the informant or his family members to rush to the police, inasmuch as, when they had found, Md. Ayub, the deceased missing, they in a natural manner had initially made an effort on the next date of the occurrence to trace him and after having failed to trace him in the whole day when they came to know from P.W. 4 and P.W. 11 of his brother being killed at the hands of the appellants, in the previous night they had lodged the FIR without any delay. As with regard to the alleged discrepancy of police of arriving at the place of occurrence for recording the statement of the informant, Mr. Mishra, learned APP for the State was of the view that this part also has been explained by the Investigating Officer, inasmuch as, he having recorded the station diary entry with regard to rumour of the brother of the informant, the deceased, missing for last twenty four hours had proceeded to make an inquiry in course of which FIR was lodged by him. He has placed reliance on the extra judicial confession made by the appellant Ganeshi Muni leading to recovery of the dead body of the deceased from the place shown by him and has submitted that all the other appellants have been named by Ganeshi Muni to have assaulted and killed Md. Ayub, their conviction u/s 302 /34 IPC as also u/s 201 IPC is both factually correct and legally sustainable.

6. Before we would advert to the aforementioned submissions, it would be thus necessary for us to have a close look to the evidence on record.

7. The prosecution in support of its case has examined as many as 16 witnesses out of whom Md. Hanif (P.W. 4) and Sk. Jalil @ Zahir (P.W. 11) are the two witnesses of the actual occurrence of assault. P.W. 1, Md. Raisuddin brother of the informant is said to be the witness of the first part of the occurrence namely, the verbal altercation as with regard to fishing rights between them (deceased on the one hand and the appellants on the other). P.W. 2 (Md. Ainul Haque) another brother of

the informant alongwith P.W. 8 (Md. Sajjad) and P.W. 10 (Gyasuddin) and the informant himself (P.W. 12) are at best hearsay witnesses to the disclosure of the names of the assailants which is said to have been made to them by Md. Hanif (P.W. 4) and Sk. Jalil @ Zahir (P.W. 11), the two eye witnesses; as also the alleged extra judicial confession of the accused Ganeshi Muni leading to recovery of the dead body of the deceased.

8. Md. Jubair Alam (P.W-3), Md. Soaib (P.W. 5), Md. Furkan (P.W. 6), Md. Yunus (P.W. 7) and Md. Nuruddin (P.W. 9) are the witnesses who have tendered for their cross-examination. P.W. 13 is the Doctor who is said to have conducted the post mortem over the dead body of the deceased and P.W. 14 (Kedar Prasad Dubey), P.W. 15 (Baidya Nath Ram) and P.W-16 (Sachchida Nand Chaudhary) are the three police officers out of whom P.W. 15 is the main Investigating Officer whereas P.W. 14, Kedar Prasad Dubey and P.W. 16, Sachchida Nand Chaudhary are said to have conducted part of the investigation.

9. The prosecution in support of its case has also led documentary evidence and has exhibited as many as six documents in which Exhibit-1 is the Fardbeyan, Exhibit-2 is the signature of Abdul Mennaon the seizure list, Exhibit-2/1 is the signature of Murshid Alam on the seizure list, Exhibit-3 is the Seizure list, Exhibit-4 is the post mortem report of Md. Ayub, Exhibit-5 is the formal F.I.R. and Exhibit-6 is the Inquest Report.

10. In this case, defence has led no evidence in support of its case but then from the trend of cross-examination, it is apparent that their plea was one of total denial of the occurrence in the manner alleged or even recovery of the dead body of the deceased at the instance as with regard to making extra judicial confession of Ganeshi Muni leading to recovery of the dead body of the deceased.

11. Their being two eye witnesses to the actual occurrence of assault on the deceased, the prosecution has to largely depend on their evidence as with regard to conviction u/s 302 /34 IPC. It is here that one has to very carefully examine the evidence of P.W. 4 and P.W. 11, inasmuch as, they are said to have witnessed the entire occurrence in the night of 19/20th of October, 1988 but they are said to have revealed the whole occurrence including the names of the appellants only on next day at 4 pm i.e. almost after 16 hours of the alleged occurrence.

12. P.W. 4 (Md. Hanif) in this regard in his examination-in-chief has claimed that he had gone to guard his Kalai crops in his field alongwith Md. Sk. Jalil @ Zahir (P.W. 11) while they were in the process of returning to their own village they had heard hulla on which they are said to have gone towards the place from where the hulla was emerging. PW-4 had stated that when he and PW-11 had reached at the place they were threatened to remain stand still at a distance otherwise they would be eliminated. P.W. 4 has further stated that he had seen Ayub fallen on the ground and the appellant Sk. Sannee @ Sonwa and others assaulting as a result whereof the

deceased had fallen on the ground. P.W. 4 has also claimed to have identified all the five appellants by name and face, who according to him had caused the injuries on the person of the Ayub. According to this witness all the five appellants were armed with lathi and they had threatened him and P.W. 11, that in case they would disclose about the said occurrence to anyone in the village, they would also be eliminated. The said witness has claimed that out of fear he had run towards Mahespur Bahiyar and had spent the whole night in a Kamath and also did not return to his home even in the next morning. According to this witness when he alongwith P.W. 11 had reached near Bajraha Bahiyar nearly at about 4 pm in the evening they had met a large number of persons out of whom P.W. 12 is said to have asked where about his brother Ayub and only then the two witnesses namely, Md. Hanif (P.W. 4) and Sk. Jalil @ Zahir (P.W. 11) had given the entire narration of the occurrence which had taken place in the last night.

13. The presence of PW-4 at the time of occurrence and his being in a position to witness the entire occurrence as also identified the five appellants when put to cross-examination, he could not satisfactory explain three circumstances, firstly the distance of his home from the place of occurrence being 400 yards why did he return away to a further distance of two kilometers to a kamath in Mahespur Bahiyar, secondly his remaining stationed for whole night in the said kamath and yet not disclosing anything to the son of the owner of the kamath, who is said to have reached to the Kamath in the early next morning alongwith his servant and finally his giving narration of the entire occurrence well after 16 hours though it was possible for him to give this disclosure of assault on Md. Ayub in the night of the occurrence itself much before he is said to have given such information to informant, P.W. 12 at 4 pm on the next day of occurrence.

14. It is here that his being an interested witness in supporting the prosecution case, has been discovered, inasmuch as, it has been admitted by him that he was married to sister''s-daughter of informant. Thus his evidence in isolation without independent corroboration cannot be made the basis for proving the case of prosecution. It is here that the importance of the other eye witness, P.W. 11 (Sk. Jalil @ Zahir), becomes significant.

15. P.W. 11, the other alleged eye witness, however, has given complete U-turn to the prosecution case, inasmuch as, he has claimed that though he alongwith P.W. 4 had seen the occurrence and had identified all the five appellants as the assailants of Md. Ayub but when he alongwith P.W. 4 (Md. Hanif) had gone towards Kamat in Mahespur Bahiyar, he had divulged the entire information about the occurrence early in the morning to Ishqu the son of the owner of the Kamath namely, Md. Harun. The fact that P.W. 4 had said that nothing was divulged to Ishqu, the son of Md. Harun or the man who had come in the morning in the Kamath and the contrary stand taken by P.W. 11 of divulging entire information and non-examination of Md. Ishqu poses a big question as with regard to credibility of

entire version.

16. Such discrepancy is further exposed in the deposition of the Investigating Officer who while describing the place of occurrence had stated that he did not find any Kamath in the north of the place of occurrence. It has to be kept in mind that in the topography given by the I.O. P.W. 15 (Baidya Nath Ram) as with regard to place of occurrence in which he has clearly stated the place of occurrence in Bhutahadhar to be at a distance of 300 yards from Karbaladhar, from where the dead body of the deceased was said to have been recovered. The veracity and the correctness of P.W. 11 of being the eye witness of the occurrence is further weakened from his admission in his cross-examination wherein he had stated that for going back from his field i.e. place of occurrence in Bhutahadhar there would be no need to go to the place of occurrence in Bhutahadhar rather there was a straight road from which one could have returned back to home. P.W. 11 had further said that one could straightway walk to his home without touching Bhutahadhar. It thus becomes manifestly clear that the two eye witnesses have set out a contradictory story which also does not get independent corroboration from any other witness at least on the point of occurrence leading to the death of Md. Ayub.

17. The category of witnesses in criminal prosecution, as was recently laid down in the judgment of the Apex Court in the case of Govindaraju @ Govinda Vs. State by Sriramapuram P.S. and Another, , could be either wholly reliable or wholly unreliable or neither wholly reliable or unreliable. The oral testimony in the present case of P.W. 4 and P.W. 11 can be classified only in the category of being wholly unreliable, untrustworthy and incredible. Since, the whole prosecution case hinges on there being two eye witnesses, inasmuch as, the evidence of hearsay witnesses is also based on the testimony of these two witnesses, this Court will have no difficulty in also rejecting the evidence of the hearsay witnesses on the point of occurrence as allegedly given to them by P.W. 4 and P.W. 11.

18. A major jolt to the prosecution case is also received from the evidence of the Medical Officer, who has found no trace of the dead body of Md. Ayub, the deceased to have been submerged in water for a period of nearly 36 hours. It is, however, the case of the prosecution that Md. Ayub was done to death in the night of 19/20th October, 1988 and the dead body was recovered in a heap of water on 21st of October, 1988 at about 9 am i.e. after more than 36 hours of his death. The said dead body was thereafter sent for post mortem and the post mortem was conducted at about 4:45 pm on 21.11.1988. The Doctor, however, had found only the following injuries on the person of the deceased Md. Ayub. The relevant observations recorded in the Post Mortem Report reads as follows:--

Post mortem examination on the dead body of Md. Ayub:--Rigor Mortis present found the following ante mortem injuries on his person:--(1) echymosis right flank pelvic region 6" x 1" one inch above the right illiacrest. (2) Echymosis pelvic region right side 5" x 1" parallel to injury no. 1, 1" apart. (3) bleeding both nostril. (4)

fracture of neck, (5) laceration and abrasion on neck interior side 1" above the larynx, 4" x 1". (6) lacerated injury left temporal region 2" x 1/2" x 1/4". Dissection:--fracture of left temporal bone. Haemasoma underneath the skull. Brain Tissue & menenges laceration on left side. Right side second & third cervical vertebrae fractured. Heart empty on left side. Lungs pale & Liver pale. Spleen pate, Kidney pale. Stomach contains undigested food. Small & Large intestine contains fluid and gas.

Opinion regarding cause of death-Death in my opinion is due to shock & haemorrhage particularly injury nos. (5) & (6). Caused by hard blunt substance. Time elapsed since death--Time elapsed since death within 24 to 48 hours.

(Dr. N. Singh)
Sadar Hospital,
21.10.1988
Purnea.

19. A question would arise that if according to the Doctor, there was no trace on the dead body of being submerged in water and death was caused by injury nos. 5 and 6 being ante mortem in nature and time elapsed was about 24 to 48 hours, can the occurrence be said to have been proved by the prosecution? In Modi''s Medical Jurisprudence and Toxicology, 23rd Edition he opines as follows:--

The skin of the hands and the feet shows a bleached, corrugated and sodden appearance, after the body has laid in water for 10 to 12 or more hours. This condition of the skin is known as the washerwoman''s hand. It is first seen in the fingertips within three to four hours and later by 24 hours and later by 24 hours, in both the hands. It proves only that the body was immersed for a prolonged time without reference to the cause of death. It develops whether the person is alive or dead when he enters the water.

20. The aforesaid extracted observations as with regard to the medical evidence is only to show that that the prosecution has not tried to say a word in the evidence as with regard to the body being sub-merged in water. The post mortem report does not indicate any such finding with regard to body being sub-merged in water. Thus there is no direct or even any indirect evidence on the actual point of assault and the manner of occurrence is also not supported from the medical evidence. In such a situation there would be great difficulty in maintaining conviction and sentence of the appellants for offence under Sections 302 /34 IPC.

21. The matter can be viewed from another angle, inasmuch as, it is here that the evidence of the Investigating Officer becomes important. The Investigating Officer says that he came to know from a rumour as with regard to missing of Md. Ayub from his house and that is how he reached the house of informant, P.W. 12, where he is said to have recorded the fardbeyan of P.W. 12 at 10 pm on 20.10.1988. The Investigating Officer, however, has not been able to explain the source of rumour

and in paragraph no. 6 of the cross-examination has virtually conceded to the admitted prosecution case that an information was already given to the police by P.W. 12 by going to the Police Station, because P.W. 12 in his deposition had categorically stated that after knowing the name of assailants from P.W. 4 and P.W. 11 at 4 pm on 20.10.1988, he had immediately gone to the Police Station and had given his information and on his information the police had came to the place of occurrence. A question would arise if P.W. 12 was already knowing the names of the assailants of Md. Ayub, was it necessary for the prosecution to get the recovery of the dead body for lodging of the F.I.R? It is here that all the brothers of P.W. 12 have also supported P.W. 12 as with regard to P.W. 12 going to Police Station. Reference in this connection may be made to the evidence of P.W. 1 in paragraph no. 6, where he has categorically stated that at about 10 pm in the night the case had already been instituted in the Police Station. Similarly, P.W. 2 has stated after knowing the names of the assailants was made known by P.W. 4 and P.W. 11 as also other facts with regard to the death of Md. Ayub, the elder brother of P.W. 12 had gone to Police Station along with five to six persons. P.W. 10 had similarly supported this aspect that P.W. 12 had gone to the Police Station for giving information to the police and when P.W. 12 in paragraph no. 9 has himself stated that:--

22. Nothing could remain for speculation that the earliest version of P.W. 12 given to the police at the police station has been purposely suppressed by the police officer who claims to have arrived in the house of P.W. 12 at 10 pm on rumour of Md. Ayub (the deceased) missing for last 24 hours, moreover, when all the aforesaid witnesses have consistently supported the arrival of the police and recording of their earlier statement in between 2 pm or thereafter in the night of 20.10.1988, a big question would arise why the police after recording the fardbeyan at 10 pm had immediately gone back to Police Station. This mistery is unresolved and specifically when the conduct of the investigating officer is taken into consideration, it becomes also clear that the police did not arrive at 10 pm so as to record the fardbeyan of P.W. 12. In this regard, it is significant to note here that in the fardbeyan allegedly given at the house of P.W. 12 the police officer had come to know about five of the assailants in presence of the two eye witnesses and yet the police officer made no effort to record the statement of P.W. 4 and P.W. 11 and left that to be recorded in the second visit to the house of the informant on a lame plea that there was no one in the police station and he had only recorded the statement of P.W. 11. It is thus very clear, that it would not be safe to rely on the story of P.W. 4 and P.W. 11 being the eye witnesses even in the aforesaid light of the inherent improbability introduced at the instance of the police officer himself.

23. All the appellants were also charged for the offences u/s 201 /34 IPC on the basis of recovery of the dead body at the instance of co-accused Ganeshi Muni. In view of Section 27 of the Evidence Act that much of evidence on which dead body was recovered will be admissible and therefore, the charge u/s 201 will have to be examined with some more care and caution.

24. It is in this backdrop that one has to examine the further prosecution case including the police officer to have received information while recording the statement of the witnesses in the village as with regard to apprehension of Ganeshi Muni in the house of the mukhiya. Neither mukhiya has been examined nor had the alleged confessional statement of Ganeshi Muni been recorded. No one has come out to support the apprehension of Ganeshi Muni. There is also no statement of Ganeshi Muni which is said to have been recorded and it is only the oral extra judicial confession of Ganeshi Muni made by him to police, the I.O. which is said to have led to recovery of the dead body of Md. Ayub in Karbaladhar. That part of the evidence of the investigating officer, P.W. 15 being significant is quoted hereinbelow:--

25. Thus even in absence of any other corroboration as with regard to extra judicial confession made by appellant Ganeshi Muni, this much is admissible that on his statement and at the place shown by him, the dead body was recovered, Section 27 of the Evidence Act, in this regard is very specific which reads as follows:--

Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

26. Explaining the scope of Section 71 of the Evidence Act, the Apex Court in the case of State of Maharashtra Vs. Suresh, , had held as follows:--

We too countenance three possibilities when an accused points out the place where a dead body or an incriminating material was concealed without stating that it was concealed by himself. One is that he himself would have concealed it. Second is that he would have seen somebody else concealing it. And the third is that he would have been told by another person that it was concealed there. But if the accused declines to tell the criminal court that his knowledge about the concealment was on account of one of the last two possibilities the criminal court can presume that it was concealed by the accused himself. This is because the accused is the only person who can offer the explanation as to, how else he came to know of such concealment and if he chooses to refrain from telling the court as to how else he came to know of it, the presumption is a well-justified course to be adopted by the criminal court that the concealment was made by himself. Such an interpretation is not inconsistent with the principle embodied in Section 27 of the Evidence Act.

27. Yet again in the case of Aftab Ahmad Anasari Vs. State of Uttaranchal, , had held as follows:--

There must be a chain of evidence so far complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability, the act must have been done by the accused. Where the various links in a chain are in themselves complete, then a

false plea or a false defence may be called into aid only to lend assurance to the court. If the circumstances proved are consistent with the innocence of the accused, then the accused is entitled to the benefit of doubt. However, in applying this principle, distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other.

28. Even in the much celebrated case of Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), , as with regard to disclosure statement of the accused persons and their admissibility u/s 27 of the Evidence Act it was laid down as follows:--

PW-100, Sl, Sunil Kumar and PW-101, Inspector, Surender Kumar Sharma deposed that on the early morning of 5.5.1999 accused Amardeep Singh Gill @ Tony Gill was arrested and he made a voluntary disclosure vide Ext. PW 100/7 that on 29.4.1999 he had a talk with Alok Khanna over telephone and thereafter a telephone call was received at about 8.30 p.m. from Sidhartha Vashisht @ Manu Sharma. He has further disclosed that Alok Khanna came to his house in Tata Sierra Car No. MP-04-V-2634. He has further disclosed that he and Alok Khanna went to Qutub Colonnade in Alok Khanna''s Tata Sierra bearing No. MP-04-V-2634.

Accused Manu Sharma surrendered on 6.5.1999 at 2.30 p.m. at Patiala Guest House, Chandigarh before, Inspector, Raman Lamba, PW-87 and ASI Nirbhay Singh, PW-80. After his arrest accused Manu Sharma had made four disclosure statements. The first was an oral disclosure made to Inspector, Raman Lamba wherein he said that he could recover the pistol from Ravinder Sudan at Mani Majra. However, it was pointed out that the search of the house at Chandigarh was taken and since the diary containing the address of Ravinder Sudan could not be found, no recovery could be affected.

On 7.5.1999, accused Manu Sharma made a disclosure to Inspector Surender Kumar Sharma, PW-101 which was recorded as Ext.-PW-100/12. In the said disclosure, he disclosed that he was using his younger brother Kartik''s Cell Phone No. 9811096893 in making calls to his friends like Tony Gill, Alok Khanna, Amit Jhingan and others. He also disclosed the phone numbers of some of the co-accused and that he handed over his cell bearing No. 9811096893 to Yograj Singh in Panchkula and can recover the same. Pursuant to the disclosure of Sidhartha Vashisht @ Manu Sharma the mobile phone used by him was recovered from accused Yograj Singh vide Ext.-PW-100/23.

The third disclosure is Ext.-PW-100/Article- 1 which was video recorded on 7.5.1999 itself after the accused was produced before the Metropolitan Magistrate and copies of which were duly supplied to the accused during trial. From the disclosure Ext.-PW-100/Article 1 there were further discovery of facts admissible u/s 27 of the Evidence Act. Pursuant to the disclosures of Manu Sharma investigations were carried out and it was that the accused were in close contact with each other over phone and accused Manu Sharma had made a number of calls from the house of

Vikas Yadav son of D.P. Yadav to his house in Chandigarh and to Harvinder Chopra at Piccadilly.

The fourth disclosure of accused Sidhartha Vashisht @ Manu Sharma was recorded by PW-101 wherein he had disclosed that Ravinder Sudan @ Titu having concealed the pistol, had gone to Manali (H.P.) where he met his uncle Shyam Sunder and he very well knew the place where they concealed the pistol and that he could lead to Manali to recover the pistol used in the incident. It further came on record that calls were made to USA to Ravinder Sudan. It may not be out of place to mention that Calls were exchanged between the accused and made to USA were discovered pursuant to the disclosures made by the accused persons.

29. Recently in the case of Bhagwan Dass Vs. State (NCT) of Delhi, , it has been held as follows:--

The accused had given a statement (Ex.-PW-7/A) to the SDM in the presence of PW-11 Inspector, Nand Kumar which led to discovery of the electric wire by which the crime was committed. We are of the opinion that this disclosure was admissible as evidence u/s 27 of the Evidence Act vide Aftab Ahmad Anasari Vs. State of Uttaranchal, , Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), . In his evidence the Police Inspector, Nand Kumar stated that at the pointing out of the accused the electric wire with which the accused is alleged to have strangulated his daughter was recovered from under a bed in a room.

30. Thus on an analysis of the evidence on the point of recovery of the dead body at the instance of assailant Ganeshi Muni and the law as discussed above, we have no difficulty in holding that the prosecution has proved the charge u/s 201 as against appellant Ganeshi Muni, only. Such charge u/s 201 of the Indian Penal Code against other appellants cannot be said to have been proved in absence of any evidence against them or recovery of any material much less dead body at their instance. Moreover, it is well settled that extra judicial confession of a co-accused cannot be used against other co-accused persons in absence of any corroboration from any other evidence. In the present case, there is nothing to support the charge u/s 201 of the Indian Penal Code as against other appellants.

31. In the light of our discussions made above, we are of the view that the prosecution has failed to prove its case beyond reasonable doubt as with regard to charge u/s 302 /34 of the IPC against all the appellants as also the charge u/s 201 /34 IPC against remaining appellants except Ganeshi Muni.

32. The prosecution, however, has been able to prove its charge as against appellant Ganeshi Muni u/s 201 of the Indian Penal Code and therefore while setting aside the conviction of all the appellants, this Court would uphold the conviction of Ganeshi Muni u/s 201 of the IPC and accordingly, his sentence of 5 years rigorous imprisonment on this count is affirmed. Rest of the conviction and sentence against all the appellants is set aside and the impugned judgment therefore as against

Ganeshi Muni would stand modified to the aforementioned extent. The appeal, therefore, is allowed in part and the liability of the bail bonds of all the appellants except Ganeshi Muni would stand discharged. Appellant Ganeshi Muni must be taken into custody to serve out the remaining sentence u/s 201 of the IPC.