IN THE HIGH COURT OF DELHI AT NEW DELHI

(Hon'ble Mr. Justice R.S. Sodhi and Mr. Justice P.K. Bhasin)

State (through CBI) _____ Appellant(s)

versus

Santosh Kumar Singh _____ Respondent

Criminal Appeal No. 233 of 2000 decided on October 17, 2006

Mr. A. Sharan, ASG with Mr. Ashok Bhan, Mr. Amit Anand Tiwari, Mr. Devashish Bharuka, Mr. Farook Razack, Mr. Ankur Jain, Ms. Mukta Gupta, Mr. Ashwin Vaish and Mr. Faisal Farook, Advocates for the Appllant(s).

Mr. R.K. Naseem with Mr. Manu Sharma, Mr. Sachin Sharma, Mr. Shubham Asri, Mr. Dinesh Sharma, Advocates for the Respondent.

The Judgment of the Court was delivered by

R.S. Sodhi, J.

1. Criminal Appeal No.233 of 2000 seeks to challenge judgment dated 3rd December, 1999 of the Additional Sessions Judge in acquitting the respondent herein of the charges under Sections 302 and 376 IPC in case FIR No. 50/1996, Police Station Vasant Kunj, New Delhi, later transferred to CBI and re-registered as RC.1(S)/96-SIU.V/SIC.II/CBI/SPE/New Delhi.

2. The facts of the case, as noted by the learned Additional Sessions Judge are:

> "... (2) That on 23.1.1996 Ms. Priyadarshini Mattoo (since deceased) hereinafter referred to as "the deceased" was residing with her parents at B-10/7098, Vasant Kunj. Prior to that the deceased had stayed in co-

educational hostel of Institute of Economic Growth, University of Delhi, at the residence of her relative Capt. Ravi Kumar in home No. A-267, Rajouri Garden and at the residence of Lt.Col. (Retd.) S.K. Dhar at B-1/4, Safdarjung Enclave, New Delhi. The deceased was murdered on 23.1.1996.

(3) The deceased was a student of LL.B. at University of Delhi in Campus Law Centre from 1993. She had studied and completed 5th Semsester of L.L.B. At the time of murder the deceased was in the 6the Semester of LL.B. Course.

(4) Accused Santosh Kumar Singh was also a student of LL.B. in campus Law Centre, Faculty of Law, University of Delhi. The accused had passed LL.B. from University of Delhi from the said Campus Law Centre in December, 1994.

(5) The accused while he was student at Campus Law Centre acquainted himself with the deceased. The accused possessed a bullet motor cycle No. DLI SG 1122. On the motor cycle even after passing the LL.B. Course the accused used to visit the said Law Centre. The accused also followed the deceased from University to her house and at times when she used to visit other places, the accused used to harass and intimidate the deceased there also. The deceased lodged several complaints against the accused at different police stations. The details of such complaints are as follows:

(i) On 25.2.1995, while the deceased was traveling in her car, the accused followed her in said bullet motor cycle and tried to stop the deceased at the traffic point. The deceased reported the said incidence by lodging a complaint at the Police Station R.K. Puram, New Delhi. D.D. Entry NO. 13-A dated 25.2.1995 was lodged at the said Police Station. The accused was taken to the Police Station R.K. Puram. The accused gave an undertaking at the said Police Station, “not to harass in future”. After this undertaking the accused was let off by the said Police Station.

(ii) On 16.8.1995 the accused followed the car of the deceased on his motor cycle up to her residence at Vasant Kunj. The accused tried to break open the door of her residence on 16.8.1995. The Police was called. A complaint was lodged by the deceased. The accused alongwith his motor cycle was taken to the Police Station Vasant Kunj. This time again the accused gave an undertaking not to have any concern with the deceased in future. The D.D. Entry No. 468 dated 16.8.1995 and 3-A dated 17.8.1995 was recorded at the Police Station Vasant Kunj. The deceased was not satisfied by that undertaking. The deceased made a request to the SHO Vasant Kunj to keep the complaint pending.

(iii) On 6.11.1995 the accused tried to catch hold of the arm of the deceased. The accused harassed her at Campus Law Centre. The accused lodged a complaint at the Police Station Maurice Nagar in this regard.

FIR No. 129/95, under Section 354 IPC dated 6.11.1995 was registered at Police Station Maurice Nagar. The accused was arrested. The accused was released on his personal bond.

(iv) In the intervening period on 27.10.1995 the deceased along with her father met the Commissioner of Police, New Delhi. The deceased complained against the behaviour of the accused. The deceased was directed to contact Dy. Commissioner of Police (South West), Delhi. The deceased then met Shri U.N.V. Rao, Dy. Commissioner of Police (South West) on 27.10.1995. To the said Dy. Commissioner of Police the deceased complained against the accused. On the complaint, Personal Security Officer was provided to the deceased.

(v) The deceased filed a complaint dated 27.10.1995 to the Dean, Faculty of Law, Campus Law Centre stating harassment. The accused was advised to desist from such activities.

(6) The State claimed that in retaliation the accused also made complaints to the authorities of University of Delhi on 30.10.1995 alleging therein that the deceased was simultaneously pursuing two courses from University of Delhi i.e. M. Com. And LL.B. in violation of the rules. In pursuance of the complaint show cause notices dated 1.11.1995 and 27.11.1995 were issued by Prof. B.B. Pandey to the deceased seeking her explanation. It is also claimed by the State that the accused also sent reminder dated 4.12.1995 and 20.12.1995 to the University authorities for expeditious action against the deceased. Not only this, the accused personally pursued the mater against the deceased.

(7) In response to the show cause notices, it is claimed by the State that the deceased submitted explanation dated 1.12.1995 stating that the deceased was a student of M. Com. Way back in 1991. The deceased was yet to appear in LL.B. IIIrd Year examination. In her explanation, the deceased reiterated harassment by the accused for the last about one and half years from then. It was claimed by the deceased that the complaint was malicious. The result of the LL.B. 5Th Semester of the deceased was withheld by the University of Delhi pending final decision on the said complaint.

(8) On 23.1.1996 Personal Security Officer Head Constable Rajinder Singh did not turn up at the residence of the deceased in time. Consequently, the deceased left for University of Delhi in her car along with her parents who were also to visit Tis Hazari Courts to attend some civil case. They left the residence at 9.15 a.m. They reached Tis Hazari Courts at about 10.15 a.m. At tis Hazari Courts the parents of the deceased got down. HC Rajinder Singh, Personal Security Officer who was to reach at the residence of the deceased directly reached Faculty of Law, University of Delhi. Said Personal Security Officer noticed the accused at the Faculty of Law on the said bullet motor cycle.

(9) The deceased reached the Faculty of Law at about 10.30 a.m. The deceased attended the class from 11.15 a.m. To 12 noon. The deceased also filled her form of option for the subjects. The deceased left the Faculty of Law along with Personal Security Officer HC Rajinder Singh in her maruti car. On way back the deceased also checked her parents, if they were available at Tis Hazari Courts. Not finding them there the deceased returned to her residence at about 1.45 p.m. The deceased directed HC Rajinder Singh that he should visit to her residence at about 5.30 p.m.

(10) After deceased had reached her residence, Virender Prasad who was servant at the house left at 2.30 p.m. To meet his friend Vishnu Prasad Chaurasia @ Bishamber at the residence of Lt. Col. S.K. Dhar at Safdarjung Enclave, New Delhi. Said servant Virender Prasad returned at about 4.55 p.m. The servant went for buying medicines and then went out with the dog. In the meantime, the accused came to the residence of the deceased.

(11) It is alleged that the accused was noticed standing near the door of the flat of the deceased towards the stair case at about 4.50 p.m. with helmet fitted with visor i n his hand by the neighbour Shri Kuppuswami, PW-2.

(12) The State also claimed in the report that later Shri Jaideep Singh Ahluwalia, Security Supervisor also saw the accused at about 5.30 p.m. near residence of the the deceased. The accused was also noticed by Shri O.P. Singh, Advocate, on his bullet kotor cycle getting out of the parking area of B-10 Vasant Kunj and proceeding towards Vasant Kunj area around 5.30 p.m.

(13) At about 5.30 p.m. on 23.1.1996 Personal Security Officer HC Rajinder Singh reached at the residence of the deceased along with Constable Dev Kumar. The said constable pressed the bell of the flat of the deceased. No one responded. Then HC Rajinder Singh went to the other door which was towards courtyard side. The door was knocked. Again there was no response. It was then noticed that the door was open a bit. They went inside. They entered the bed room of the deceased. They found that the body of the deceased was lying under the double bed. Seeing this, Personal Security Officer HC Rajinder Singh, it is claimed by the State, became nervous. HC Rajinder Singh along with Constable Dev Kumar came to the dining room of the flat of the deceased. They telephoned the Police Station Vasant Kunj. They informed SHO Inspector Surinder Sharma about the incidence. The D.D. Report No. 24-A Ex. PW-18/A was recorded at the Police Station. The English translation of the said report reads as follows:-

> "… The time is 5.45 p.m. At this time HC Rajinder Singh No. 415/SW has informed on telephone from house No. B-10/7098, Vasant Kunj that he was the Personal Security Officer of Priyadarshini Matto, daughter of Shri C.L. Mattoo, resident of B-10/7098 Vasant Kunj. Priyadarshini Mattoo had called him for duty at her house between 5.30 p.m. And 6.00 p.m. On arrival at the house of Priyadarshini Mattoo was

lying under the double bed placed at the bed room of the house and there was no movement of her body. It appears that some incidence has taken place...."

(14) This report which was lodged at the instance of HC Rajinder Sing was entrusted to Lalit Mohan, Additional SHO, Vasant Kunj. He along with SI Sushil Kumar, SI Padam Singh, HC Satish Chand, HC Kishan Singh, Constable Jaswant Singh, Constable Parmanand with Driver HC Mahinder Singh reached the place of crime on Government vehcle No. DBL 8687. SHO Surinder Singh, Vasant Kunj also reached towards the place of crime on his Govt. Vehicle No. DDB 3718 driven by Subhash Chand and with operator Constable Rishi Pal.

(15) The dead body of the deceased was found lying under the double bed. The cord of the heat convector was found on the neck of the deceased. There were blood stains around the body. It is claimed by State that the investigation of the case was taken up by Shri Lalit Mohan, Inspector-cum-Additional SHO of Police Station Vasant Kunj. FIR No. 50/96 under Section 302 IPC was registered at the Police Station Vasant Kunj on the complaint of father of the deceased. The said complaint is Ex. PW-1/D, English translation of the complaint reads as follows;

"… Statement of Shri C.L. Mattoo, son of Shri T.C. Mattoo, resident of B- 10/7098, Vasant Kunj, New Delhi, aged 59 years .... stated that I live at the aforesaid address and I am working and posted as Chairman of Sulabh Internationa. On 23.1.1996 in the morning at about 9.15 a.m. I along with my wife, Rageshwari Mattoo, and daughter, Priyadarshini Mattoo, went to Tis Hazari Courts in the maruti car to attend civil case. My daughter, Priyadarshini, left me and my wife, Rageshwari Mattoo, at Tis Hazari and went to Campus, University of Delhi in the maruti car where she was studying LL.B. My wife and myself along with Advocate came to Patiala House Courts. Thereafter on TSR scooter I and my wife came to Safdarjung Enclave. From there I went to attend the official meeting at Vikas Kuteer, ITO Complex, I.P.Estate and my wife went to All India Institute of Medical Sciences. I returned at my house B-10/7098, Vasant Kunj, New Delhi at about 7.30 p.m. I noticed people at my house and crowd collected there. My wife Rageshwari Mattoo had also arrived at the house a little earlier. On enquiry it came to my notice that my daughter, Priyadarshini is lying in her bed room. Blood is oozing out from her mouth and on seeing it appears that someone has strangulated her. Police action be taken..."

(16) On the statement Ex. PW-1/D Inspector Lalit Mohan made an endorsement Ex. PW-48/A detailing the observations made by him of the bed room where the deceased was found murdered and also detailing in it her condition. It was stated that near the neck of the deceased a wire of heat convector connected with the heat convector was there. There were ligature marks on the neck of the deceased and the blood which was oozing out from the mouth of the deceased was on the floor. There were marks of scratches

on the mouth, neck and chest of the deceased. PW Lalit Mohan recommended for the registration of the case under Section 302 IPC and also requested for calling the crime team and dog squad at the site.

(17) On the recommendation of PW Lalit Mohan Inspector, FIR No. 30/96 mark 'C' was recorded at the Police Station Vasant Kunj.

(18) The crime team visited the spot of crime along with the photographer. The photographs, Ex. PW-25/A-7 to A-12 of the site of crime from different angles were taken by the photographer. Hair was found on the jacket of the deceased. Broken pieces of glass were found near the dead body. Blood stains were also near the dead body. These articles along with blood stains on guaze and the piece of electric wire cut from heat convector used in strangulation were seized vide memo Ex. PW-18/B. Articles were sealed in an envelope while the wire was sealed in a cardboard box after the same was kept in a polythene bag by PW-48, Shri Lalit Mohan Inspector.

(19) Inspector Lalit Mohan recorded the statement of witnesses Shri S.K.Dhar PW- 6, Mrs. Matto PW-44 and HC Satish Kumar PW-42 on that day at the spot. A site plan PW48/B depicting the observations as noticed by him was prepared. PW Lalit Mohan Inspector held the inquest proceedings and sent the dead body to Safdarjung Hospital. An application PW 48/D was made for preservation of body. PW Lalit Mohan also recorded the statement of witnesses Varinder Prasad, servant in the house of the deceased, HC Rajinder Singh, Personal Security Officer.

(20) As in the statement recorded under Section 161 Cr.P.C. the mother of the deceased had suspected the accused, the accused was joined in the investigation on the night intervening 23/24.1.96. The accused was brought before PW Lalit Mohan. Lalit Mohan noticed that there was tenderness on the right hand of the accused. The injury was not bandaged or plastered. The accused was therefore sent for medical examination vide application Ex.PW 23/A. Dr.R.K.Wadhwa (Ranjan Wadhwa) examined the accused at 3.45 a.m. vide MLC Ex.PW 23/B. In the MLC Ex.PW 23/B Dr.Wadhwa noted as follows:-

(1) O/E conscious. Pulse 72/mt., BP 150/90 MMHC. Pupils- NSWR B/L

(2) Swelling right hand dorsum lateral aspect, tenderness plus crepitius (5 thmetacarpal).

(3) Scar marks old healed multiple both lower limbs, chest abdomen-NAD. Advised X-ray right hand AP lateral LAS.

(21) Nail scrapping, hair samples of the accused were taken and handed over to SI Shambu Singh. After X-ray an opinion was arrived at that there

was fracture of 5th matacarpal right hand. It was held by Dr. Wadhwa that the injuries on the person of accused were grievous in nature and were caused by blunt object.

(22) After medical examination of the accused, it is claimed by the state that accused was interrogated and then relieved. The accused was directed to visit to the police station on 25.1.96 at 9 a.m.

(23) On 25.1.96 PW Lalit Mohan wrote application Ex.PW33/A to the Autopsy Surgeon for conducting the Autopsy of the deceased. He also submitted inquest form duly filled in dated 25.1.96 to the Autopsy Surgeon. The post mortem was conducted by the Board of Doctors consisting of Dr.Chander Kant, Dr.Arvind Thergaonkar and Dr.A.K.Sharma between 4.25 p.m. and 5.35 p.m. The following relevant observations were noted in the post mortem report with respect to the body of the deceased.

(General observations)

Eyes closed both corneas hazy, sub-conjunctival haemorhages were present in both eyes. Mouth opened partially showing tip of tongue pressed between upper and lower teeth. Rigor mortis passed off in both upper and lower limbs. Postmortem staining well developed on the back of the body. No signs of putrifaction present. Black curly pubic hairs non-matted.

Antemortem injuries

(1) Liner abrasion in the lower part of chest rightside 12 cm. below from right nipple size 4 cm x 0.1cm rightside, 12 cm, below from right nipple size 4cm x 0.1 cms.

(2) Linear abrasion on the anterior part of right upper arm size 4.5 cms. x 0.1 cm.

(3) Bluish colour with pinkish appearance contusion extending from the root of neck to front and upper part of chest, above both breast region upto left side of chest in an area of 27 cms x 18 cms. irregular in shape.

(4) Incomplete ligature mark injury extending from the back of neck right side to front of neck right side upto the middle of neck front region. It was transversely placed. Total length 14 cms., 6 cm. below from right ear with 1cm, 6.5 cm. on the end away from chin side. width was 1 cm. on right front of neck.

(5) Incomplete ligature mark injury on the base of right mendible region extending upto chin. Total length 16 cm. width 3 cm. Both ligature mark injury margins are clean and not abraded.

(6) L-looking abrasion on right face below right ear pinna 5 cms below limb, and 3 cm. transversa limb x 3 cm.

(7) Abrasion right temple region size 1 cm x 1 cm.

(8) Abrasion in the middle and mid region of nose in an area of 1 cm x 1 cm.

(9) Contusion left eye. Both eye lids bluish in colour.

(10) Abrasion on left check in an area of 3 cm. x 2 cm.

(11) Contusion left cheek in an area of 9 cm. x 8 cm. with swelling of left parotid region area.

(12) Abrasion on left cheek 9 cm below from left ear in an area of 2 cms. x 1 cms.

(13) Graze abrasion on the anterior aspect of left shoulder region in an area of 5.5 cm x 5 cm.

(14) Abrasion in the middle of suppra-sternal notch region (chest) size 1 cm x 1 cm.

(15) Six variable size and shape graze abrasion on right side of chest above right breast in an area of 9 cm. x 5 cms.

(16) Abrasion on the lower part of chest left side 10 cms. below from left nipple size 5 cms. x 1 cm.

(17) Contusion over left illiac creast region size 10 cms. x 2 cms.

(18) Contusion over right illiac creast region size 3 cms. x 2 cms.

(19) Contusion mucous membrane inner aspect of lower lip right side.

INTERNAL EXAMINATION

(1) Extravassation of blood under scalp in left frontal region in an area of 5 cm. x 2 cm.

(2) Brain 1200 gms. congested oedematous with patachial haemorhage. Intra cerebral haemmorrahage in the middle of left

cerebral hemisphere present.

(3) Dissection of neck. Extravassation of blood under neck tissues and structures on right side of neck and above the base of right mandible present corresponding with the two ante mortem ligature marks injuries externally.

Fracture of superior cornlue (right) of thyroid cartridge. No fracture of hyoid bone seen. No fracture of laryngeal group of cartridges seen. Lyranx was normal. Fracture of ribs (right) anteriorily No.2, 3 and 4 was present. Right lung contusion on the upper rib superior surface. Congested weight 160 gms.

Left lung was 200 gms. congested.

Local examination of private part showed black, curly non-matted public hairs, hymen intact. No tearing present. Admitting one finger only. Internal examination of uterus did not show any abnormal defect.

(24) The Board of doctors conducting the Post Mortem collected two vaginal swabs in two slides from vagina and sealed. They also took sample of blood and sample of blood gauze soaked in blood, sample of scalp hairs of the deceased, cloth hair clip with elastic (used by ladies for scalp hair). The Board also prepared one bundle containing the clothes of the deceased consisting of one high neck full sleev T-shirt showing tearing mark in the area of left breast region blood stained. Brassiere white netted, elastic on the back portion in place. Jeans blue colour, button in place chain in front (jip) in place not opened. Blue colour underwear showing no stains, one pair of woolen socks. These articles duly sealed with one sample of seal after the postmortem examination were handed over to the Investigating Officer concerned.

(25) At the time of postmortem the Investigating Officers were Inspector Lalit Mohan, Inspector SHO Additional Vasant Kunj, Shri N.K. Pathak, Inspector CBI SIC II (Why CBI was also there? How he came into picture shall be detailed here-in-after).

(26) The Board of Medical Experts prepared the postmortem report Ex. PW 33/B. The cause of death was given by the Board of Medical Experts Asphyxia as a result of strangulation by ligature, ligature material having soft surface (smooth surface). It was also opined that the injuries found on the dead body were sufficient to cause death in the ordinary course of nature.

(27) On 25.1.96 PW Lalit Mohan after postmortem seized a greeting card Ex.PW 29/B from the house of the deceased said to be in the bed room of the deceased lying at the dressing table depicting the writing of Santosh Kumar Singh son of Shri J.P. Singh, resident of House No.6-11, NPL Kings Way Camp, New Delhi vide memo Ex. PW 18/E in the presence of SI Sushil

Kumar, police station Vasant Kunj. Inspector Lalit Mohan also took into possession the original complaint of the deceased addressed to SHO Vasant Kunj Ex. PW 1/A, undertaking given by the accused Ex. PW 1/B and also request of the deceased Ex. PW 1/H dated 16.8.95 vide memo Ex. PW 12/C.

(28) According to the case of the state, it appears that after postmortem or during the time of post mortem on 25/1/96 the accused was arrested by Inspector Lalit Mohan. No personal search memo of the accused as is generally prepared appears to have been prepared on the said date. On the same day a helmet of the accused Ex. P3 was taken into police possession by Inspector Lalit Mohan vide memo Ex. PW 18/D. According to PW 18/D the accused was wearing the helmet. The helmet was not having any visor. The metallic black paint was not at the place where visor is fitted. There were cracks on plastic lines there. Inspector Lalit Mohan also took into possession bullet motor cycle No. DL 1SC 1222 Ex. P2 from the possession of the accused vide memo Ex. PW 18/C. It is stated that accused brought the same while driving. The specimen handwriting of the accused Ex. PW 48/E1, E2 and E3 were also taken by Inspector Lalit Mohan. Such handwriting contained specimen of writing on the greeting card which was allegedly found on the dressing table inside the bed room.

(29) Inspector Lalit Mohan also collected as per document Ex. PW 42/A on 25.1.96 as claimed with the assistance of expert team of CFSL dried blood from floor of the room of the spot of crime sealed with SKS, prepared stains from the floor of said room (spot hair sample were collected from floor of the room, blood stains cutting were taken from the mattress. All these articles were sealed as per document Ex. PW 42/A with the seal impression SKS. No signatures of any member of alleged expert team, however, were obtained nor name disclosed.

(30) The investigation of the case was entrusted to CBI on 25.1.99. On that day Inspector Lalit Mohan handed over the investigation to CBI after postmortem and seizures as depicted above. The investigation of the case consequently, thereafter, was done by the team of CBI consisting of Shri A.K.Ohri, DSP and other officer of the CBI including SP Shri S.K.Bhatnagar. The ransoms for such entrustment of the case to CBI are depicted in letters as noted hereafter.

(31) The letter dated 24.1.96 Ex.PW 50/B written by Shri Rajeeva Ratna Shah to Shri K.Vijaya Rama Rao, Director, Central Bureau of Investigation, New Delhi reads as under:-

New Delhi
Jan. 24, 1986

Dear Shri Rama Rao,

I am enclosing a communication from the Chief Secretary, Govt. of

National Capital Territory of Delhi dated 24.1.96 requesting that the investigation of the case of murder of Miss Priyadarshini Matto daughter of Shri C.L.Mattoo, resident of house No.B-10/7098, Vasant Kunj as recorded vide FIR No.50/96 dated 23.1.96 at Police Station Vasant Kunj be taken up by the C.B.I. Since Miss Priyadarshini Mattoo, the victim had sometime back lodged a report at police station Maurice Nagar, against the son of an I.P.S. Officer of AGMU Cadre the Police Commissioner feels that the parents of the victim would not have the required confidence if the investigation of the case is conducted by the Delhi Police. In the light of above, it has been decided that the CBI should undertake the investigation of this case immediately. With regards,

Yours sincerely,

(RAJEEVA RATNASHAH)
Shri K.Vijaya Rama Rao,
Director,
Central Bureau of Investigation,
New Delhi.

(32) This transfer of the case was made on the request of the Commissioner of Delhi Police made to Lieutenant Governor of Delhi who in turn submitted the request to the Special Secretary to Government of India and sent letter Ex. PW 50/C through its Chief Secretary, Govt. of India, Ministry of Home Affairs, New Delhi. This letter is dated 24.1.96. In pursuance of the request of Shri Rajeeva Ratna Shah to the Director, CBI. CBI registered a case on 25.1.96 at 7 p.m. vide Ex. PW 50/A.

(33) Thereafter, Inspector Lalit Mohan of police station Vasant Kunj produced the accused to DSP Shri A.K. Ohri, PW-50 on 25.1.96 at 9 p.m. The investigation thereafter was conducted by DSP Shri A.K. Ohri with the assistance of Shri N.K. Pathak, Inspector and other inspectors of C.B.I.

(34) On the same day, underwear of the accused which the accused was wearing was seized by CBI vide memo Ex. PW 37/A at 9 p.m. Since at the time of interrogation at about 9 p.m. it was represented by the accused that the accused was wearing the same underwear at the time of commission of crime and it was not washed.

(35) On 26.1.96 the accused was produced in the court. The police custody remand till 28.1.96 was granted to C.B.I.

(36) DSP Shri A.K. Ohri visited the site of crime on 26.1.96. Since Shri C.L. Mattoo the father of the deceased was not there and ladies were at the house when he returned. On 27.1.96, he recorded the statement of domestic servant Virender Pershad at the office of the C.B.I. He also directed Shri D.P.

Singh, DSP to conduct the house search of the accused vide requisition Ex. PW 50/D. Alongwith the requisition he also gave document Ex. PW 50/E regarding the search to be effected. Shri D.P. Singh during the house search prepared the document Ex. PW 22/A on the same day, which were in relation to the previous relation between the accused and the deceased. He seized his group photographs, photographs of law faculty, etc., along with telephone cum engagement diary etc. On 27.1.96, Inspector Lalit Mohan produced before Shri Ohri, DSP, exhibits of the case with him. Since on 27.1.96 it is claimed by the C.B.I. that malkhana was closed, DSP Shri A.K. Ohri kept the case property entrusted by Lalit Mohan with him under his lock and key.

(37) On 28.1.96 a request Ex. PW 34/A under signatures of Shri S.K. Bhatnagar was made to Dr. A.K. Gupta, Medical Supdt., Dr. R.M.L. Hospital for taking blood sample of the accused. DSP Sh. A.K. Ohri and other staff alongwith the accused went to Dr. R.M.L. Hospital. They met Dr. N.S. Kalra (Head Biochemisty). Two blood samples of 10 ml. each of accused Santosh Kumar Singh were taken by Ms. Godavari Mangai, Lab Asstt., Dr. R.M.L. Hospital and were handed over to Dr. N.S. Kalra, Head Biochemistry for safe custody. The memo was got initialed by Ms. Godawari, Dr. N.S. Kalra and Dr. A.K. Gupta.

(38) On 29.1.96, DSP Shri A.K. Ohri through inspector Sumeet Sharma, claimed State, collected the Post Mortem Report of the deceased. The exhibits alongwith the sample seal Ex. PW 49/G were deposited with the Moharrir Malkhana on the same day. After exhibits were entered in the malkhana register, DSP Shri A.K. Ohri got back the same, it is claimed, to prepare reference for DNA examination.

(39) On 29.1.96, DSP Shri A.K. Ohri went to seize the complaints lodged by the accused against the deceased and also examined. HC Rajinder Kumar and constable Ved Kumar of Police Station Vasant Kunj. Surinder Pal examined Rajinder Singh and Dev Kumar. On 29.1.96, DSP Shri Ohri also recorded the statement of Vikas Sharma. On the same day, the exhibits which were entrusted to Shri Ohri by the Investigating Officer of local police Shri Lalit Mohan were deposited in the malkhana of CBI.

(40) On 29.1.96 also the specimen handwriting of the accused Ex. PW 24/A1 to A21 were obtained in the presence of Shri Narinder Mohan Sharma and Suresh Sharma by the CBI. On 30.1.96, it is claimed Shri Ohri got signed the letter Ex. PW 39/A. Shri M.L. Sharma, Joint Director, C.B.I., New Delhi signed this letter. It was addressed to the Director CCMB, Hyderabad. It is claimed that the said letter was signed by Shri M.L. Sharma in the evening of 30.1.96.

(41) On 30.1.96, Sh. Surinder Pal, DSP, examined Prof. B.B. Pandey and Prof. Wason. On 31.1.96, he examined Dr. Ravi Bhatia. On the same day, he also seized correspondence consisting of copy of letter dated November 1, 1995, letter dated November 27, 1995, copy of letter dated 1.12.95,

complaint letter of deceased with comments of Prof. B.B. Pandey dated 30.11.95, photocopy of complaint dated 25.2.95 along with undertaking of accused dated 25.1.95, photocopy of complaint of deceased dated 16.8.95, copy of letter dated November 1, 1995 addressed to accused by Prof. B.B. Pandey, original letter of deceased dated nil and original letter of deceased dated 30.9.93 vide seizure memo Ex. PW 40/A.

(42) On 31.1.96, SI R.S. Shekhawat, PW-39 was deputed to go to Hyderabad. He was handed over the exhibits as follows : -

1. One sealed parcel containing clothes of the deceased such as T-shirt, brassiere, jeans and underwear.

2. One sealed packet containing underwear of the accused Santosh Kumar Singh.

3. On sealed jar containing vaginal swabs/vaginal slides of the deceased.

(43) Shri R.S. Puniya was asked to collect the blood sample of the accused from R.M.L. Hospital and entrust to Shri Sekhawat. A letter Ex. PW 34/C dated 31.1.96 was addressed to the Medical Supdt., R.M.L. hospital.

(44) Shri R.S. Puniya collected the blood samples from R.M.L. Hospital and handed over the same to SI Ranbir Singh Sekhawat who was directed to proceed to C.C.M.B., Hyderabad. Shri Ranbir Singh Sekhawat on 31.1.96 reached to C.C.M.B., Hyderabad. On 1.2.96, SI Ranbir Singh Sekhawat deposited the article entrusted to him in the office of Dr. Lalji Singh, officer on special duty at C.C.M.B., Hyderabad. Acknowledgment Ex. PW 49/A was issued by Dr. Lalji Singh. The acknowledgment related to :

1. One sealed parcel containing clothes supposed to be of the deceased, namely, T-shirt, brassiere, jeans and underwear.

2. Vaginal swabs/vaginal slides supposed to be of the deceased. 3.One Thermocole box containing 4 vials marked as S-1, S-2, S-3 and S-4 supposed to be blood of the accused.

(45) The underwear of the accused which was also taken to Hyderabad was however returned by Dr. Lalji Singh holding that the exhibit was not of relevance for DNA finger printing test.

(46) DSP Shri Ohri on 1.2.96 also went to the house of the deceased. He recorded the statement of Smt. Rageshwari Mattoo, the mother of the deceased. He also recorded the statement of one Shri V. Shanker Jha. On 1.2.96, DSP Shri A.K. Ohri collected the file from the office of DCP South West whereby Personal Security Officer was provided to the deceased. The

file was collected vide memo Ex. PW 30/B.

(47) On 1.2.96, it was represented to Investigating Officer Shri Ohri by Hemant Mattoo, the brother of the deceased, that the accused was noticed by his neighbour Shri Kuppuswami near the residence of the deceased on the day of murder. Shri Kuppuswami was checked on the said day but he was not available at his residence.

(48) On 2.2.96, Investigating Officer Shri Ohri went to police station, Maurice Nagar. There he recorded the statement of ASI Balbir Singh who had investigated the case FIR No.129/95 on the report which was lodged by the deceased for offence under Section 354 IPC against the accused.

(49) On 3.2.96, the accused who was on Police Remand till then was produced before the court and sent to Judicial Custody. During interrogation, the accused named several persons namely Shri Arun, Advocate, Manju Bharti, Tanvir Ahmed Mir, Shri O.P. Singh, Advocate, etc., to be friends of deceased and accused. Their statements were also recorded during investigation. On 4.2.96, Shri Ohri again visited at the site of the crime at Vasant Kunj. This time he recorded the statement of Shri Kupuswami, PW-2.

(50) On 5.2.96, exhibits of the case were deposited in Central Forensic Science Laboratory by Shri Ohri himself after taking the same from Malkhana alongwith letter Ex. PW 50/G which was written by Shri S.K. Bhatnagar. In pursuance of that during the investigation four reports were obtained from Central Forensic Science Laboratory consisting of Ex. PW 50/H-1 to H-4 alongwith the letter Ex. PW 50/H-5.

(51) On 6.2.96 specimen handwritings of the accused which were obtained alongwith greeting card Ex.PWL29/B which was collected from the house of the deceased were sent to the Director Central Forensic Science Laboratory along with letter Ex.PW29/A. The report Ex.PW29/C was also received from the laboratory.

(52) On 8.2.1996 in order to check the version which was made by the accused during the investigation that the accused had been to Indian Law Institute on 23.1.96 to Shri Ohri took a journey from the site of the crime to the Indian Law Institute on motorcycle at a speed of 40 to 45 k.m. per hour. It took 35 minutes.

(53) On the same day constable Suraj Mal who had taken the photographs of the scene of the crime on 23.1.96 brought photographs Ex.PW 25/A-7 to A-12 which were taken into possession.

(54) During the investigation the accused had disclosed that the accused had received injuries on metacarpal bone in accident. Inspector Terial was sent to M/s Nirmay Diagnostic Centre to collect the medical records

therefrom. He also visited Hindu Rao Hospital. The said records were collected by Inspector Terial on 9.2.96 and 16.2.96. They were deposited on the respective dates in the malkhana of the CBI. The records consisted of X-ray entry register written pages 1 to 93 and booking slip cash receipt Sr.No.801 to 15.2.96, 1.1.96 to 16.2.96 and casualty register No.CX44494 w.e.f. 16.12.95 to 16.2.96.

(55) On 16.2.96 DSP Shri D.C.Sharma was deputed to bring X-ray of the accused which was taken in Safdarjung Hospital on 24.1.96.

(56) On 20.2.96 a letter Ex.PW27/A was addressed to the Medical Supdt. Safdarjung Hospital. Opinion was given by Dr.Mukul Sinha and Dr.G.K.Choubey on 22.2.96 vide Ex.PW23/F and Ex.PW.23/F. Dr.Mukul Sinha opined that the injury on the 5th metacarpal bone looked to be fresh injury as there was no evidence of callous formation. The opinion of Dr.Choubey was sought if the injury was caused on 14.1.96 as claimed by the accused.

(57) On 18.3.96 Inspector Terial collected the report from CCMB Hyderabad. The report Ex.PW49/B was received by the IO on 20.3.96 after return of inspector Terial on 19.3.96 from Hyderabad.

(58) After investigation the accused was challaned in accordance with law.

(59) The case came up for hearing before Shri S.C.Mittal, Additional Sessions Judge on 17.7.97 vide order dated 17.7.97 my predecessor Shri S.C.Mittal, learned Additional Sessions Judge was pleased to frame charge under Section 376 read with Section 302 IPC against the accused. The accused pleaded not guilty to the charge and claimed trial.

3. Since there was no eye witness of the incident, the Prosecution relied upon circumstantial evidence brought on record through oral as well as documentary evidence. As many as 51 witnesses were examined by the Prosecution and when final arguments were being heard, the trial court decided to call one Dr. G.V. Rao as a court witness from CCMB, Hyderabad who along with Dr. Lalji (PW-48) had conducted the DNA test. The trial court while appreciating the evidence divided the case into the following circumstances which, according to it, arose for court's consideration and were pressed into service by the Prosecution for establishing the guilt of the accused (respondent herein) :

"(i) The accused had been continuously harassing the deceased right from the end of 1994 to January, 1996, a few days before her murder.

(ii) The accused had more than once given an undertaking that the accused would not harass the deceased in future while admitting that the

accused had been doing so earlier.

(iii) The motive of the accused was to have the deceased or to break her.

(iv) On the day of occurrence, the accused was seen in the premises of faculty of Law, University of Delhi in the forenoon, where the deceased had gone to attend LL.B. class. While the accused was no more a student of faculty of Law at that time.

(v) At the crucial time before murder, i.e. about 5 p.m. on 23.1.96, the accused was seen outside the door of the flat of the deceased, i.e., B-10/7098 with helmet in his hand which had a visor.

(vi) On the day of occurrence after murder, the accused had reached late to attend class at Indian Law Institute, Bhagwan Dass Road, where the accused was a student too.

(vii) Immediately after the murder, the mother of the deceased had raised suspicion that the accused had a hand in the murder of her daughter.

(viii) When the accused joined investigation on the night between 23/24.1.96, the accused had an injury on his right hand. There was swelling and fracture on 5th metacarpal of right hand. There was no plaster or bandage on his hand. That injury was fresh, having been caused 24 to 28 hours. The blood pressure of the accused at that time was high which showed anxiety.

(ix) DNA Finger Printing Test conclusively establishes the guilt of the accused.

(x) On 25.1.96, the helmet Ex. P.3 of the accused which was taken into possession had broken visor. On 23.1.96 before murder, it was found by PW-2 Shri Kuppuswami, PW Personal Security Officer Rajinder Singh that the helmet of the accused had a visor. Violence was detected on both sides of visor. Helmet was besmeared with a spec of blood. At the spot pieces of visor were found near the body of the deceased besmeared with her blood.

(xi) The deceased had 19 injuries on her person besides three broken ribs. These injuries were suggestive of force used for rape. A tear mark over the area of left breast region on the T-shirt of the deceased suggested that the force was used for molestation.

(xii) The accused took a false defence that fracture on the hand of the accused was sustained by the accused on 14.1.96 and it was not a fresh injury. The accused also gave false replies against proved facts.

(xiii) The influence of the father of the accused resulting in deliberate

spoiling of the case."

4. On appreciation of the evidence recorded in respect of the aforesaid circumstances, the trial court observed at page No. 440 of its judgment the facts which he found to have been established while dealing with the offence of murder as follows :

"Now the question is if offence under Section 302 IPC stands proved against the accused? The following findings of facts have been arrived at against the accused:"

(a) The accused in January, February, 1995 tortured the deceased by following her upto her residence at Safdarjung Enclave at the place of Col. S.K. Dhar and also by telephoning at All India Institute of Medical Sciences and at her residence.

(b) On 25.2.94, the accused followed the deceased and tried to stop the car of the deceased by shouting at her which was the cause of lodging the report Ex. PW 6/A. The accused submitted the apologies Ex. PW 6/B and Ex. PW 6/D.

(c) The accused took the false plea that the accused was going to IIT on the said date. The accused also took a false stand that there was any friendship between the accused and the deceased. The plea of the accused that such report was result of refusal of accused to allow the deceased to sing in the Cultural Festival of University has not been substantiated. The plea is false to the knowledge of the accused.

(d) The accused went to the house of the deceased at B-10, Vasant Kunj on 16.8.95 and banged the door of the house of the deceased when the deceased was alone at home.

(e) On 6.11.95, the accused tortured the deceased in the Campus Centre of Law which resulted in lodging of FIR at police station Maurice Nagar, Delhi.

(f) Even the accused mentally tortured the deceased in December, 1995.

(g) The accused preferred petition against the deceased to the University against her appearing in both examinations of M.Com and LL.B. in order to pressurize the deceased to succumb to the ulterior design and motive of the accused.

(h) The accused was noticed at or around 4.50 p.m. outside gate of the deceased where the crime had taken place.

(i) Smt. Rageshwari Mattoo, the mother of the deceased soon after the crime suspected the hand of the accused in barbaric killing.

(j) The influence of the father of the accused has been there in the matter and there was deliberate inaction by the police.

(k) The accused at the time of crime had helmet with visor, which helmet was later seized with broken visor (while recording his findings on Circumstances No. 4 and 10, the learned trial Judge had also accepted that the helmet, Ex. P-3 was found to be having blood on it when it was examined at CFSL but the find of blood was not of significance since group and origin of blood was not be stated in the CFSL report, Ex.PW-50/H-4).

(l) On account of lack of fairness on the part of CBI in keeping the evidence collected by it during investigation from Nirmay Diagonostice Centre and Bara Hindu Rao and also the deposition of the witnesses as pointed by the accused away from the court, negatively there is a probability of defence plea if injury on metacarpal bone and breaking of visor was on 14.1.96?

5. And thereafter the trial Judge acquitted the respondent of the charge of rape holding it to be not proved and gave benefit of doubt for the offence of murder. The State felt aggrieved and filed this appeal which was entertained after giving it leave to appeal. At the outset the learned Additional Solicitor General (for short "ASG") appearing for the State submitted that the acquittal of the respondent is for the reasons which are absolutely perverse and the final verdict is contrary to the aforesaid positive findings on almost all the circumstances in favour of the prosecution and before proceeding further to justify this submission he drew our attention to the following final conclusions of the trial Judge in the impugned judgment(at page nos.443-447). The findings with regard to the attitude of the accused towards the deceased coupled with the presence of accused at the gate of the house of deceased when considered on the basis of basic principles and also from the point of view of Science of Psychology and particularly the views of popular Psychologist Philosopher William James who recognized two different types of personalities viz tender minded and tough minded as already noted the accused can cause the crime of murder who falls in the category of tough minded person. The accused had ulterior motive to have the deceased and consequently was after her. On the pretext that there should be a compromise regarding the withdrawal of complaints on either side that the accused entered the house of the deceased. On account of the personality of accused as that of the tough minded persons, the accused committed the barbaric act as has been committed in the present case of the deceased. When considered with the injuries on the person of the accused on the date of incidence which was fresh and that the accused possessed the helmet with visor which was later seized from the possession of the accused without

visor, i.e., helmet with broken visor, the reaction of the mother of the deceased soon after the crime that the accused was responsible for the crime, coupled with the false defence taken by the accused. The ball of proof of criminal justice system has been thrown away from the boundary of criminal justice system to beyond reasonable doubt.

The onus then thus shifted on the accused to prove that the injuries on the metacarpal bone and the breaking of the visor was the result of the incidence dated 14.1.96 so as to rebut the presumption of law as said. The accused himself has failed in that for evidence was withheld by State.

As already noted the onus on prosecution has the basis of fairness and good sense. If the matter is considered from the point of fairness and good sense and unfairness on the part of CBI which had collected the evidence of alleged defence of the accused from Nirmay Diagonostic Centre and Bara Hindu Rao Hospital through Inspector Teriyal and also noted the deposition of witnesses in that behalf, but kept the said material away from the court, i.e., from judicial scrutiny coupled with the non-production of the important witness PW Virender Prasad the servant in the house, has led to the thinking if it has resulted in obstructing the ball of proof of criminal justice from going towards beyond reasonable doubt due to lack of fairness on the part of CBI in producing such evidence for judicial scrutiny/review. It has also led to thinking has CBI by acting in this manner negatively intended to help the accused and thus betraying the confidence which was reposed in it instead of subordinate staff of Delhi Police. Should such negative rebuttal to the poof by presumption of law as a result of lack of fairness on the part of CBI be given weightage?

It has, thus, resulted into the thinking, should the accused be convicted on the charge under Section 302 I.P.C. or be extended the benefit of doubt for the said charge.

I gave the thought even till this date on this aspect. It was also considered should CBI by exercise of power under Section 311 Cr.P.C. called upon at this stage to produce the evidence which has been kept away and scrutiny be made of such evidence if rebuttal is possible and then the witness be summoned. This court also exercised such power by summoning Shri G.V. Rao and recalling IO Lalit Mohan. The court felt that such exercise of power by court again may be held as if the court is discharging the role attributed to prosecution. Such a course appeared to be unfair to the system of administration of justice.

Thus the court is left to consider has unfairness on the part of CBI in keeping the material defence evidence collected by it away from court, created a hole in the proof of the case beyond reasonable doubt. Two views attack the mind (1) yes and other (2) No. Where two views are possible and there is matter of doubt, the accused should be allowed to escape as is the principle.

I am conscious of the fact that exaggerated devotion of the rule of benefit of doubt must not nurture fanciful doubts from lingering suspicions and thereby destroy social defence. Justice cannot be made sterile as the plea that is, is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law.

In this case, there is no fanciful doubt. It is CBI which is responsible for such end.

Accordingly, the accused is extended the benefit of doubt under Section 302 IPC and acquitted under Section 376 IPC.

6. Learned ASG contended that from the findings rendered in favour of the prosecution it is more than evident that the learned trial Judge was fully convinced that it was the accused only who had committed the murder of the deceased but still gave him the benefit of doubt on the specious reasoning that CBI had been unfair to the accused by suppressing material evidence collected by it during investigation while in fact nothing was concealed. He further submitted that he would be supporting the reasoning and the conclusions of the trial court regarding those circumstances which have been held in favour of the prosecution and would be challenging the ones that have been held against the prosecution although the prosecution case stood established even without the circumstances which have been decided against the prosecution.

7. After going through the above quoted findings of the trial Court regarding the offence of murder we were also shocked to notice the final verdict of acquittal rendered by the trial Judge. The trial Court has held that the accused had a motive for the crimes alleged to have been committed by him. It has also been held that on the fateful day also the accused came to the University to haunt the deceased. The trial Judge has also arrived at a categorical conclusion that on 23rd January in the evening at about 4.50 p.m. the accused was seen standing outside the flat of the deceased by her immediate neighbour PW-2 Kuppuswamy. PW-17 Vikas Sharma is the witness who had sold some plastic containers on the day of incident to the deceased around 4.20 p.m. just before the accused was noticed outside the flat of the deceased. That shows that the deceased was in her flat around that time. It has been found to be so by the trial Court. It has also been accepted by the trial Court that at that time the accused was having a helmet with a visor and later on when the police recovered that helmet of the accused it was not having the visor but there were some broken pieces of the visor sticking to the helmet which pieces later on were found to be having some blood on it. The helmet was in a bad shape at that time and according to the prosecution that was so because of the accused having assaulted the deceased with it with great force. At about 5. 40 p.m. the deceased was found dead in her flat. In our view in the wake of these findings in favour of the

prosecution there was hardly any scope for the acquittal of the accused. However, learned counsel for the respondent-acquitted accused vehemently sought to defend the final verdict rendered by the trial Court while submitting that in fact the findings which have been given in favour of the prosecution cannot be sustained and now that this Court is hearing an appeal against the judgment of acquittal he would demonstrate that none of those findings can stand judicial scrutiny and this Court would also give the verdict of acquittal in favour of the respondent after reversing the findings given by the trial Court in favour of the prosecution. Then started the marathon battle between the two sides which was, of course, argumentative only. 8. Learned ASG contended that as regards circumstances no. 1 to 3(motive), the trial court has dealt with them adequately from page nos. 49 to 133 of the judgment and dealt with all the arguments advanced by the defence counsel and held that the accused had been harassing the deceased and had given written apologies as also had taken false pleas. Circumstance No. 5 also found favour with the learned Judge who held that the prosecution had been able to show that the accused was noticed at the scene of crime at around 4.50 p.m. Circumstance no. 7 has also been with the aid of Section 6 Indian Evidence Act held in favour of the prosecution. Learned ASG submitted that the trial court while dealing with circumstance no. 11 has rightly come to the conclusion that the killing of Miss Mattoo was a barbaric act but the trial court has not addressed itself properly to circumstance No.12 to the effect of taking of false pleas by the accused in his statement under Section 313 Cr.P.C. regarding the cause of injury on his hand found on the night of incident itself. According to the learned ASG the finding on the circumstance is perverse. He also supports the finding of the trial court as regards Circumstance No.13, namely, that the father of the accused, holding an influential police post, has influenced the investigation. The learned ASG joined issues with the finding of the trial court in respect of circumstance No.6 to the effect that the same has been brushed aside ignoring the testimony of PW-15 Mr. Arun Kumar.

9. The learned ASG contended that the trial court, while dealing with circumstances No. 4 and 10, has wrongly held that the aforesaid circumstances were of no consequence although it finds that the accused was seen at Campus Law Centre by PW-32, Head Constable Rajender Singh, having a helmet with a visor on the morning of the fateful day. He contended that the trial court went wrong in not appreciating this circumstance since PW-32 Head Constable Rajender Singh, who had been appointed as the Personal Security Officer to the deceased has categorically deposed that he had seen the Respondent with the helmet with a visor at the College in the morning. Therefore the presence of the Respondent in front of the house of the deceased with the helmet as deposed to by PW-2 Kuppuswamy becomes more credible. Moreover, it is nowhere the case of the Respondent that the helmet Ex. P-3 did not belong to him and in fact he admits it to be his helmet. It may be noted that the finding of the trial court, as regards failure on the part of the Prosecution to refer the helmet for examination, is factually wrong. The same was referred for examination and Ex. PW-50/H-4 is the CFSL report which opined that unusual impact of force had been detected

on either side of the helmet. It has also been opined that the injuries on the person of the deceased have been caused by a blunt object. This being the case, an inference ought to have been drawn by the trial court that the Respondent, who had a history of harassing the deceased and who was last seen at the place of incident with the helmet, opined to have had unusual impact of force on either side and also having blood on it when examined at CFSL, was used by the Respondent in the crime. Specially so, when the Respondent's plea that he had fallen from his bike on 14.1.96 and had suffered injury on that day did not really find favour with the trial court. Learned ASG also argued that the trial court has gone wrong in holding Circumstance No.8 against the Prosecution on three counts, namely, (i) lack of fair play on the part of the CBI in not producing material collected with regard to injury on the head of the accused which he claimed to have sustained when on 14.1.1996 when he had fallen down from his motor cycle, (ii) proper procedure had not been followed in referring the matter for opinion directly to Dr. G.K. Chaubey, PW-27 who had opined that maximum limit of injury duration was upto 48 to 72 hours and that probable cause of injury was striking of the hand against opponent in an altercation and not through the Medical Superintendent of Safderjung Hospital, and (iii) the court's own view as to the age of the injury. He submitted that the finding returned by the trial court on above three counts is perverse and deserves to be set aside for the the reasons that :

(i) a perusal of the trial court record reveals that in fact the CBI had placed on record the medical records sought to be relied upon by the Respondent. In any case, the Prosecution having discharged the initial burden of proof by fairly investigating by way of seeking expert opinion on the X-Ray furnished by the accused, thereafter the onus was on the Respondent by producing witnesses i.e. the alleged Doctors etc. in his defence in order to establish that the injury was caused to him on 14.1.96. Therefore, the Court rightly observed that the accused did not assist the Court in discharging the onus which was upon him to justify the defence taken by him in the matter of the alleged injury of 14th January, yet it arrived at an erroneous finding in favour of the Respondent; The doctor could not state that the X-ray film of Safderjung Hospital and that given by the father of the accused to the investigating officer was of same person and so it was for the accused to establish that;

(ii) the second ground of rejecting this circumstance on the basis that the investigating Officer directly sought an opinion from the concerned doctors, is contrary to Ex. PW.28/A dated 19.2.1996 and Ex. PW-27/A dated 20.2.1996 which are both addressed to the Medical Superintendent of Safdarjung Hospital, which clearly establish that the Investigating Officer proceeded in accordance with prescribed procedure. Once the erroneous finding of the Court as regards the aspect of 'fair-play' is dissected from the remaining finding as regards the present circumstance on the ground that it was well within the right of the accused to bring forth the doctors who allegedly examined him on 14.1.96, it is clearly established by necessary inference that the injury was received by the Respondent on the date of the

incident who was spotted at the scene of the incident just before the incident. During investigation, it is the duty of the Investigating Officer to investigate the evidence brought by the accused, which had been done in the present case by seeking an opinion from the Experts and his explanation of the date of the injury having been found non-plausible, the onus lay on the Respondent by leading defence evidence to rebut the evidence set out by the Prosecution against him. The defence not having led any evidence and in view of the evidence established by the Prosecution, the only inference that can be drawn is that the said injury ensued during the course of the transaction when the Respondent was hitting, raping, hitting and killing the deceased.

(iii) Further ground of holding this circumstance as not proved was the view formulated by the learned Judge on the basis of his own appreciation as to nature and age of the injury. It is respectfully submitted that this ground was also untenable in view of the categorical expert evidence of Dr. Chaubey who gave a report vide Ex. PW-23/F which suggested that the injury of the right hand was fresh. It is also pertinent to note that the material relied upon by the learned Judge was not put to the expert witnesses and hence his finding is liable to be set aside on this count also.

10. Learned ASG contended that the trial court returning a finding that the evidence led by the Prosecution to substantiate the DNA tests as 'inadmissible' and rejecting the same is wrong. He contended that the basis on which the trial court has rejected the DNA tests is primarily: (i) that the chain of custody of material sent for DNA test shows that there is likelihood of tampering; (ii) that the procedure of the test is not fair and proper nor are the Experts competent to carry out the tests. It was contended that the finding of the trial court that there is likelihood of tampering with the material sent for DNA test is contrary to the evidence on record. He contended that after the postmortem was conducted on 25.1.1996, all the exhibits were sealed with the seal of 'Safdarjung Hospital' by Dr. Chandrakant i.e one of the Doctors who conducted the postmortem and sealed the same on the same day in the presence of Dr. A.K. Sharma i.e. PW-33. This fact is supported by way of Ex. PW-49/G which is the sample seal of Safdarjung Hospital which clearly bears the date 25.1.1996 and the same is signed by Dr. Chandrakant. The said evidence suggests that the exhibits which have come under challenge were, in fact, sealed on 25.1.1996 by Dr. Chandrakant and were, in fact, handed over to Sub- Inspector Sunit Sharma i.e. PW-38 of CBI on 29.1.1996 along with the sample seal. This fact is corroborated by the noting on the postmortem report i.e. Ex. PW-33/B which shows receipt of the same on 29.1.1996 by the said witness. Thereafter, on the same day the exhibits and sample seal were deposited in the Malkhana by the Investigating Officer, A.K.Ohri, PW-50, on receipt of the same from Sunit Sharma. Thereafter, the said exhibits and sample seal were taken out on the same day, against entry in the Malkhana register for the purpose of preparing a reference for DNA examination. Thereafter the reference letter was got signed by the Joint Director, CBI, on the evening of 30.1.1996. Then on 31.1.1996 SI

Shekhawat, PW-39, took the same to CCMB, Hyderabad. Both, PW-49 Dr.Lalji and CW-1 Dr. Rao, have deposed that on 1.2.1996 they received all the exhibits in a sealed condition. Thus, it is the well established case of the Prosecution that the postmortem report was prepared on 25.1.1996 and that the exhibits were sealed on the same day and were received duly sealed with seals intact at CCMB. Similar is the case of the blood sample of the accused which was obtained on 28.1.1996. PW-50, A.K.Ohri, has deposed that on 28.1.1996 he along with Superintendent of Police, S.K. Bhatnagar, and the accused went to RML Hospital and met Dr. Kalra and Dr. Gupta, requesting them to take the blood sample of the accused vide letter Ex. PW-34/A which is written and signed by Mr. Bhatnagar. The sample blood of accused which was taken in our presence in four vials of 5 ml. each was marked as S-1 to S-4 and initialed by him, Dr. Kalra and Dr.Gupta. The same was then sealed. Memo in this regard is Ex.PW-34/B which was also signed by the accused and the samples were left with Dr.Kalra. PW-34 Dr.Kalra has deposed that on 28.1.1996 the accused was brought for taking blood sample, the same was taken in four vials, which were sealed and a Memo Ex. PW-34/B dated 28.1.1996 was prepared and handed over to CBI on 31.1.1996 vide Memo Ex. PW- 34/C. PW-50, A.K.Ohri, has further deposed that he asked DSP, Puniya, to collect the blood samples of the accused on 31.1.1996 from RML Hospital and the same was given to SI Shekhawat on the same day and he left by Air for Hyderabad. This fact is further corroborated by the testimony of the doctor at CCMB that they received the same on 1.2.1996 with seals intact.

11. It was contended that the trial court has found exception to the failure of mention of socks of the deceased in Ex. PW-33/A i.e. the postmortem report and Ex. PW-49/A suggests that there was tampering as also that the document, CW-1/F by Dr. Gaud, is suspicious and seems to have been prepared later on, is wrong and contrary to record. It was submitted that it is pertinent to note that the garments on which semen was found and used for DNA test was identified by positive evidence of the mother of the deceased, PW-44, in the court when the sealed envelop was opened in the court. It was submitted that the evidence conclusively shows that the case property was sealed with the seal of 'Safdarjung Hospital' which was found intact when it reached CCMB, Hyderabad as per impression of specimen seal. In this regard it was stated that nothing turns on this. As regards the failure to mention about socks in the postmortem report, it was submitted that, in fact, the socks were mentioned in the postmortem report. It was submitted that it is pertinent to note that all the evidence on record, including the deposition of PW-49 Dr. Lalji, clearly establishes that the socks of the deceased were very much part of the sealed exhibits and he had no reason to falsely depose in this regard.

12. Learned ASG also challenged the trial court's finding that Ex. PW- 33/B, i.e. the postmortem report finds the underwear of the deceased free from stains whereas the CCMB's report shows that there was stain. To this, counsel submitted, that the findings are clearly erroneous since the examination by the

doctors conducting the postmortem was with the naked eye, whereas the doctors conducting the DNA test had used a device called 'ultra violet trans illuminator' which is specially designed for the said purpose and can trace out stains which are otherwise not visible to the naked eye.

13. It was submitted that the trial court has found that the clothes of the deceased and the vaginal swabs/slides have been tampered with in the custody of the CBI. In this regard learned ASG submitted that all the exhibits were sealed with the seal of 'Safdarjung Hospital' which was found intact when it reached CCMB, Hyderabad which fact has been duly deposed to the said effect by the concerned doctors whose testimony cannot be doubted for any reason. 13A. Furthermore, there is no suggestion on behalf of the accused with regard to tampering of the seal in the cross- examination of the concerned witnesses. The finding of the trial court that shortage of blood was found by the CCMB, Hyderabad is indicative of the fact that the vials had been tampered with, is also not a correct finding. He stated that the said finding has no basis since the testimony of PW-49, Dr .Lalji Singh, suggests that the same could have evaporated. He submitted that CW-1, Dr. G.V.Rao, has deposed that there was smearing of the blood on the material used for sealing, but the seals were intact. All the evidence goes to suggest that spilling may have taken place, but since the seals were intact there could be no tampering. The Trial Court erred in suggesting that the same was due to an act of tampering. Counsel submitted that the trial court's finding that the testimony of Dr. Lalji falls outside the purview of Section 46 of Indian Evidence Act is wrong. He stated that the very fact that the tests were conducted by Dr. Rao under the continued supervision of Dr.Lalji, to suggest that Dr. Lalji does not qualify as an expert to prove the report in terms of Section 45 of the Indian Evidence Act, is wrong. Once the Court called Dr. Rao as a witness, his testimony coupled with the testimony of Dr.Lalji clearly proves the said report as per the Evidence Act. As regards, the fact that the said report cannot be relied upon since the set protocols have not been followed, is a completely erroneous finding by the trial court since the said doctors are eminent Scientists who followed an In- House Process distinct to each Lab and which is also borne out from the books they sought to rely upon during the course of their testimony. The trial court went to rely upon certain books at the time of writing the impugned judgment, which were never put to the said witnesses during the course of their examination. Thus, this reliance on the books without putting to the witnesses is contrary to the law laid down by the Hon'ble Supreme Court. Counsel submitted that various procedures required to be followed in DNA finer printing were duly brought to the notice of the trial court and in the light of the same the procedure followed by the said experts was proper and well established. Counsel also submitted that the trial court's finding that no rape has been committed is based on its failure to appreciate that the DNA extract which matched with the DNA extracted from the blood of the accused was extracted from the sperm obtained from semen found on the underwear of the deceased and her vaginal swabs/slides. It was submitted that once the DNA evidence is taken as admissible for the reasons stated

hereinabove, then the same coupled with the findings arrived at by the learned trial court in favour of the prosecution on all the circumstances except the DNA test and injury on the hand of the accused which finding also in fact does not say that the injury could not have been caused on the day of the incident, clearly suggests that the Respondent had raped the deceased and then murdered her also.

14. Challenging the reasoning of the trial court while giving benefit of doubt to the accused on the ground that there is element of lack of fair play on the part of the CBI, ASG submitted that the allegation of lack of fair play is unfounded since the CBI, in fact, brought on record the medical evidence sought to be relied upon by the Respondent. Also, the CBI cannot be blamed for the absence of Varinder Singh, servant of the deceased, since all efforts were made by the CBI to bring forth the said witness but he could not be traced, in fact, Const. Shyam was examined for the said purpose. It was submitted that the trial court has itself recorded that no adverse inference against the Prosecution can be drawn for not examining Virender Singh. It was further submitted that the learned trial court, though has recorded reasons in favour of the Prosecution, but rendered the decision against the Prosecution and hence the same deserves to be set aside being wholly perverse.

15. Mr. R.K. Naseem, learned counsel appearing for the respondent, Santosh Kumar Singh, on the other hand, eloquently argued that the trial court was wrong in holding that the harassment of the deceased by the accused was a motive or that the harassment itself was proved. He submitted that from a complete analysis of the material, there is nothing to show that the accused's behaviour is anything more than the desire of the accused for a closer relationship with the deceased. His desire to be friend of the deceased cannot be said a motive for rape much less of murder.

16. Attacking Circumstance No. 4 through which the Prosecution intends to prove that the accused was present in the University on 23.1.1996 with his black colour motorcycle and helmet with visor, counsel submitted that the so- called relevant witnesses, namely, PW-32(personal security officer provided to the deceased), PW-10 and PW-16 themselves cannot be relied upon since PW-32's own presence at the Faculty is doubtful. He did not state before the Police in Ex. PW-32/DA that he had seen the accused on a black colour motorcycle wearing black colour helmet and black visor on the fateful day. The witness, according to the counsel, has made deliberate improvements and cannot be believed. PW-16 does not corroborate the version of PW-32 since she is not sure about the presence of the accused. Even PW-10, Tanvir Ahmad Mir, does not state that PW- 32, the Personal Security Officer, of the deceased was spotted in the University.

17. Criticizing the finding on Circumstance No.5 that the accused was seen

around 4.50 p.m. near the house of the deceased, counsel submitted that the Prosecution has sought to prove this incident with the aid of PW-2, Kuppuswami, PW-3, Jaideep Singh Ahluwalia and PW-43, O.P. Singh. He contended that PW-3 has been disbelieved by the trial court which has given cogent reasons for doing so and supports the same while submitting that the version of PW-2 cannot be accepted since he did not, in the first instance, state to PW-48, Inspector Lalit Mohan, about the presence of the accused in front of the house of the deceased around 4.50 p.m. on the fateful day. Counsel submitted that there is nothing on record to show that PW-2, Kuppuswami, either noticed or mentioned this fact regarding the presence of the accused to anybody on 23.1.1996 or soon thereafter. This is in spite of the fact that the mother of the deceased pointedly, soon after the incident, claimed that she suspects the hand of the accused in the murder of her daughter. Even though there were large number of the Police Officers present in the house of Kuppuswami, this so-called fact was not narrated to any one of them by him. His unexplained silence for many days is anything more than an afterthought and an introduction in the aid of setting up false case against the accused. Learned counsel submitted that on an evaluation of testimony of PW-2, the conduct of his family and that of the deceased as also the conduct of PW-50, A.K. Ohri, the Investigating Officer for CBI, need to be examined as also the deposition of PW-48. According to the counsel, PW-48(who was the first one to be entrusted with the investigation and whose role as being helpful to the accused has been severely criticized by the trial Court) has deposed that none of the wintesses had made a statement on 23.1.1996 that the accused was seen near the house of the deceased on the fateful day. Even PW-50, the Investigating Officer, made no attempts to find out from the neighbours whether they had any information to reveal. Even otherwise, the Investigating Officer only comes to know of Kuppuswami's observations on 1.2.1996 from Hemant Mattoo who chooses to examine Kuppuswami only on 4.2.1996. Had A.K. Ohri been told on 1.2.1996 of what was observed by Kuppuswami, surely he would not have waited till 4.2.1996 to record his statement. Counsel further submitted that PW-1, C.L. Mattoo, deposes that he had been meeting Kuppuswami everyday but Kuppuswami did not disclose to him that the accused was seen standing outside the house of the deceased at 4.50 p.m. on 23.1.1996. He submitted that the statement of Kuppuswami inspires no confidence and is an introduction planted by the Investigating Officer, as was sought to be done with PW-3, Jaideep Singh Ahluwalia, Learned counsel relied upon a judgment of the Supreme Court in G.B.Patel and Anr. vs. State of Maharashtra, AIR 1979 SC 135 in support of his contention that PW-2, Kuppuswami is not a reliable witness.

18. Criticizing the finding of the trial Court on Circumstance No.6 that the accused reached 5 to 10 minutes late to class on 23.1.1996 at ILI, counsel submitted that PW-15 was cross-examined by the public prosecutor and thus no benefit can be drawn from his statement. Even otherwise, mere coming late to the class by few minutes proves nothing.

19. According to counsel, Circumstance No. 7, namely, the suspicion which was entertained by the mother of the deceased Smt. Rajeshwari Mattoo that the accused had hand in the incident is not a circumstance which can be considered for the purpose of completing a chain of events and the trial Court has wrongly considered it to be a relevant fact with the aid of Section 6 of the Evidence Act.

20. Dealing with Circumstance No.8, namely, the injury on the right hand, 5th metacarpal, of the Respondent, it was submitted that on 24.1.1996 when the Respondent was called to the Police Station, Vasant Kunj, he was examined by PW-48 who found an injury on his right hand and caused a medical examination to be conducted vide letter Ex. PW-23/A. He was examined and the MLC Ex. PW-23/B shows that the X-ray, Ex. PW-27/C, was taken by Dr. Ashok Charan who opined on Ex. PW-23/D that the accused suffered fracture of 5th metaparpal bone. He submitted that the accused had informed PW-50, A.K. Ohri, that he had suffered the aforesaid injury on 14.1.1996 consequent whereto the records of the concerned Hospital and Diagnostic Centre were seized. Although these documents were never produced nor did PW-47 depose to this effect, yet during the cross- examination of PW-47, Constable Rajbir Singh, it was found from one of the malkhana registers which he was required to produce that the documents seized concerning the Hospital and Diagnostic Centre were deposited in the malkhana. It was hereafter that the documents were produced and exhibited in cross- examination of PW-47. Even PW-50 admits that the Respondent, while in custody, disclosed that he had received injury on 14.1.1996 as a result of a fall from his motorcycle and was treated at Nirbhay Diagnostic Centre, Gujarawalan Town as also Hindu Rao Hospital. Although none of the witnesses who treated the Respondent for his injury on 14.1.1996 were examined, yet the Respondent was able to prove the fact that the injury being referred to by the Prosecution was suffered by him on 14.1.1996 due to a fall from his motorcycle. The MLC, Ex. PW-23/B, does not state that the respondent suffered any fresh bodily injury. PW-28, the Radiologist, although states that the X-rays dated 14.1.1996 and 24.1.1996 cannot be matched since they are taken from different angles, however, there is no denying that both the X-rays reveal fracture of the 5th metacarpal bone.

21. Counsel submitted that the endeavor of the prosecution to show that the injury suffered by the Respondent was fresh, is hardly borne out from the record since PW-27, Dr. G.K. Chaubey, deposed that swelling/ haematoma will persist for about two weeks after the fracture. Tenderness is due to accumulation of blood in haematoma which will persist till the swelling. As far as crepitus is concerned, PW-27, Dr. Chaubey, says that it is difficult to say when it will stop. From the above, counsel submitted, it cannot be ruled out that the accused suffered the fracture on 14.1.1996. He submitted that the Prosecution has not proved this Circumstance beyond shadow of reasonable doubt that the Respondent had received fracture on 23.1.1996 and that too in the incident of that date.

22. Supporting the finding of the trial court regarding Circumstance No. 9, namely, the rape and the DNA, counsel submitted that the topic was divided under five heads: (a) whether there was evidence of rape/sexual intercourse; (b) tampering with the exhibits; (c) DNA technology; (d) whether all the proper tests were conducted and (e) whether the opinion is conclusive regarding matching as also whether PW-49, Dr. Lalji Singh, and CW-1, Dr. V.G. Rao, are trustworthy witnesses. Analyzing the evidence regarding rape and sexual intercourse, counsel submitted that PW-48 Inspector Lalit Mohan (whose conduct, as noticed already, was severely criticized by the trial Court) deposed that he did not find any evidence at the spot to suggest that the deceased had been raped. The result of CFSL examination conducted on the articles recovered from the house do not connect the Respondent with any of the examinations. There was no semen detected on any of the exhibits. The Respondent was got medically examined and there was no injury in the shape of abrasion, nail-marks, teeth bites etc. found on his person. He also submitted that neither the hair nor the nail wash of the accused has linked him with the incident. From the above, it is established beyond doubt that the accused was not linked to the spot nor is there any evidence in the shape of semen stains nor does the medical evidence support the Prosecution's version that the deceased had been raped. He drew our attention to PW-33, Dr. A.K. Sharma, who conducted the postmortem vide application Ex. PW-33/A and in reply to Question D-6 whether the deceased had been subjected to rape or intercourse, a positive answer had been given to the effect that on medical examination of the private parts it was found: black, curly, non-matted pubic hair and hymen intact. No tearing present, admitting one finger only. He submitted that even the team of doctors who examined the clothing did not support the theory of the Prosecution of the deceased having been subjected to sexual intercourse. Counsel went on to stress that from the inspection of the spot, exhibits collected from the spot, the postmortem examination of the dead body and the medical opinion of the autopsy surgeons prove, beyond doubt, that the deceased was not subjected to sexual intercourse before her death. It was submitted that in the absence of a positive finding, it is strange that presence of semen on vaginal swab, vaginal smear slide and underwear of the deceased could be detected. In this view of the matter, the so-called DNA profile is suspicious, shrouded in mystery and ought to be rejected.

23. Counsel strenuously argued that the exhibits, namely, the underwear, bundle of clothes of the deceased prepared by the doctor at the time of postmortem examination, the vaginal swab and vaginal slide, allegedly taken at the time of postmortem, as also blood samples of the accused were tampered with. He submitted that even the underwear of the accused which was seized reveal that 'A' Group semen was present whereas it is not disputed that the blood group of the accused-Respondent is 'O+'. This is indicative of the nature of the evidence collected. He submitted that the parcel of clothes of the deceased, the vaginal swab and the slides, as per postmortem report Ex. PW-33/B, were handed over to PW-48, Inspector Lalit Mohan, and PW-37, N.K. Pathak, on

25.1.1996 after the conclusion of the post-mortem. The report is definite and categoric about handing over of the articles to them on 25-1-96. However, PW-38, Sunit Sharma, deposes that he had brought the said parcels from the doctors on 29.1.1996.. There is no support to this claim. There is no memo prepared in this regard and the contemporary evidence shows that the articles were handed over on 25.1.1996. There is no explanation as to what happened or in whose possession the articles were from 25.1.1996 to 29.1.1996 and so the possibility of tampering with the articles could not be ruled out and the finding of the trial Court to that effect is fully justified.

24. Learned counsel further sought to build the chain of doubt with reference to the malkhana register, Ex. PW-47/A, which showed that there is no mention of seals on the exhibits as also interpolation. He went on to say that there is no hospital record to prove the date when the blood samples of the Respondent were handed over to the CBI. Ex. PW-34/C, the alleged memo of seizure of blood sample from the hospital, does not have signature of any person from the hospital or any entry from the hospital record. He submitted that the bundle of clothes had been tampered with inasmuch as the pair of socks was missing at the time it was received at CCMB, Hyderabad which was not possible unless the seals of the parcels were tampered with. Even otherwise, the seals were undecipherable which is admitted by CW-1 Dr. G.V.Rao of CCMB, Hyderabad. He contended that tampering of material, sent for scientific examination, having been established, the scientific examination and result thereon is of no value and the trial Court has rightly rejected the DNA test.

25. Specifically dealing with the blood sample collected of the accused, counsel submitted that it was tampered inasmuch as what was drawn from the accused was 20 ml. of blood on 28.1.1996 but on 1.2.1996 it was found to be 12 ml. at CCMB. Without tampering with the vials of the samples of blood, so much of blood could not be missing. He submitted that blood was used to contaminate the vaginal swabs/slides obtained from Safdarjung Hospital so as to pollute the DNA test to falsely implicate the accused. Another submission of the learned counsel was that the DNA test was not properly conducted. He submitted that the Prosecution has not placed on record the protocol/procedure as to how the other exhibits, other than the blood sample, were analyzed. Dr. Lalji Singh has made a statement that no test was carried to verify that the exhibits sent were vaginal swabs and vaginal slides. No tests were carried out to find out the components of the swab. Similar is the condition regarding the underwear of the deceased. Counsel submitted that neither the extraction of sperms nor its procedure was mentioned in any other document placed on record and sent by Dr. Lalji Singh from the DNA profiling. He submitted that Dr. Lalji in his cross- examination has submitted that no photographs of the sperms were taken nor the number of sperms counted. He also contended that no tests were conducted by Dr. Lalji Singh and that it was only Dr. G.V. Rao who conducted the same. He submitted that Dr. G.V. Rao did not examine the exhibits in the examination room in order to establish that the samples were not contaminated

inter se. No steps were taken to avoid contamination. Counsel submitted that Dr. G.V. Rao admits that the clothes of the deceased were required to be examined under UV- Trans Illuminator to check presence of semen stain. This test was not mentioned as having been done in the work book. He also contended that in-house process used for elution has not been proved. Counsel has elaborately attacked the method of conducting the DNA test and submitted that the entire test was contrary to the well established principles and/or method and, therefore, cannot be taken to be a proof to show that the DNA of the sperm on the vaginal swab matched that of the blood of the accused-Respondent. He strongly supports the finding of the trial court that Dr. G.V. Rao was not a trustworthy witness. Counsel has elaborately taken us through the method/procedure which according to him should have been followed to extract DNA and submitted that the one adopted by Dr. G.V. Rao is absolutely wrong and cannot form the basis of evidence to link the accused with the crime. In any event, contamination could not be ruled out as proper controls in PCR analysis were not used which could lead to false positive results. Counsel submitted that Dr. Rao admits that to detect contamination, both positive and negative controls are required to be used during the tests. In this case it was not done. He further submitted that no precaution was taken to detect contamination as no negative controls were used and, therefore, the isolation process of DNA is not free from contamination so as to give a positive result which would lead to an inference that the sperm in the vaginal swab matched that of the accused. He strongly commended the findings of the learned trial Judge who has elaborately dealt with this aspect and his reasons for rejecting the DNA test.

26. Dealing with Circumstance No.10, counsel submitted that there is no evidence on record to show that the Respondent-accused was seen driving motorcycle after 14.1.1996 nor is there any evidence connecting the helmet with the incident since the helmet was not put to PW-33, Dr. A.K. Sharma, to show that the injuries could be caused by the helmet. The broken piece of glass seized from the place of the incident on 23.1.1996 has not been linked with the helmet. He also complained of the manipulation in the malkhana register in respect of the seizure of glass pieces alleged to have been made by PW-50, A.K. Ohri on 30.1.1996 from Nelson Mandela Road(which were told was the place where the accused had claimed to have sustained the injury on his hand on 14th January due to fall from his motorcycle). He submitted that this material link having not been established, the chain of circumstances stands broken.

27. As regards Circumstance No.12, namely, the false defence taken by the accused, learned counsel submitted that the Respondent has been able to prove that he received injuries on 14.1.1996. There is no falsity in his defence. Counsel also attacked the judgment of the trial court on the finding on 'father's influence there was deliberate inaction of the police'. He submitted that no evidence has been led to show such influence and that the observations made by the trial court are merely conjectures. Counsel submitted that the view taken by the trial, based upon material on record, is a possible one and merely because there is another

possibility and another view from the material on record that is no ground to dislodge the judgment of acquittal.

28. We have carefully and extensively gone through the material on record with the aid of counsel for the parties. Since this is an appeal from judgement of acquittal we can interfere only if we are satisfied that the findings of the trial court are perverse and have resulted in grave miscarriage of justice. High Court while hearing an appeal against acquittal has the power to reconsider the whole evidence and to come to its own conclusion in place of the findings of the trial Court but only if the decision of the trial Court is such which could not have been arrived at all by reasoning. This case is sought to be established against the accused only on circumstantial evidence and the thirteen circumstances relied upon by the prosecution have already been noticed by us in the earlier part of our judgment. We will now take up those circumstances and consider the evidence adduced by the prosecution to find out if the prosecution has been able to establish the allegations of rape and murder against the respondent. Circumstances No. 1, 2 and 3 collectively are regarding the motive for the crime. Those circumstances have not seriously been attacked by the learned counsel for the respondent, Santosh Kumar Singh who has sought to state that the entire material taken, at its face value, establishes only infatuations with the deceased which she did not like and his so called acts of stalking the deceased cannot constitute sufficient motive for the heinous crimes of rape and murder. This argument of learned counsel for the respondent is, with great respect, an under statement of the case of the prosecution. Although these facts would prove strong motive but even if we were to say that the same constitute a weak motive that would not make any difference. Adequacy of motive is of little importance as it is seen from the experience of Criminal Courts that atrocious crimes are committed for very slight motives. One cannot see into the mind of another. Here we may notice the observations of the trial Court on these three circumstances pertaining to the motive aspect of the matter made in paras no. 202 and 203 of the judgment to which our special attention was drawn during the course of arguments by the learned ASG. Why the accused went to this extent agitates the mind? Why the accused was after the deceased? The accused has not offered any explanation for the same. The good conscience directs that it was intended to put pressure upon the deceased so that the accused may have her and the deceased should not resist his action in any manner either by requesting the University Authorities or the police authorities and should not press for the actions initiated by her on account of harassment meted out to her at the hands of the accused and thus ultimately the accused may have her even against her wishes. It may be noted that although the initial complaint was dated as 26.10.95. In fact it was preferred on 30.10.96 after the deceased had preferred an application dated 27.10.95 before the University and also before DCP S/W New Delhi.The complaint by the accused was, thus, in fact counterblast to the resistive action of the deceased in not succumbing to the designs of the accused which were intended to harass the deceased with the ulterior motive to have her.

> "203. The accused according to the personalities as understood in science of Psychology falls in the category of tough minded as per the facts proved on record. The accused had the intention to have the deceased and to convert the said intention in reality and if it is not possible on account of attitude of the deceased not to allow the deceased to be of anybody else. The facts proved and the acts of the accused lead to the inference that the accused had the motive to have the deceased at all event and failing to not to allow her to be of any body else. The state has established the motive."

29. It has come on record that the deceased, who was residing with her parents at B-10/7098, Vasant Kunj, was a student of LL.B. at University of Delhi in Campus Law Centre from 1993. Respondent Santosh Kumar Singh had been intimidating and harassing the deceased. Several complaints against the accused in different Police Stations were lodged vide DD No. 13A dated 25.2.1995 at Police Station, R.K. Puram where the accused gave an undertaking not to harass the deceased in future. Yet again on 16.11.1995 the accused tried to catch hold of the arm of the deceased at the Campus Law Centre. A complaint was lodged and FIR No.129/1995 under Section 354 IPC registered with Police Station Maurice Nagar. The accused was released on personal bond. On 27.10.1995, the deceased filed a complaint with the Dean, Faculty of Law, complaining harassment. The accused was advised to desist from such activities. The deceased informed her friend PW-16 Manju Bharti also about the behaviour of the respondent, as deposed to by PW-16 herself and also to PW-10 Tanwir Ahmad Mir, another Law student of Delhi University. Thereafter, on 27.10.1995 itself the deceased, along with her father, met the Commissioner of Police and apprised him of the harassment. As a consequence, she was provided with the Personal Security Officer. In retaliation, the accused made complaints to the authorities of the University against the deceased pursuing two courses simultaneously from the University of Delhi in violation of the Rules which led to the deceased having to give an explanation and her 5th semester result was withheld. The continuous stalking of the deceased by the accused, in spite of police complaints, shows his utter disregard to the rule of law. The accused, it appears, did not care for the consequences and pursued his activities single mindedly i.e. either he would have the deceased or make sure she did not enjoy her life. His activities do suggest a strong motive of 'do or die' attitude.

30. Although the respondent has taken a plea that his so-called apologies before the police whenever the deceased lodged complaints against her were extracted from him under pressure but he has not even probabalised what to say of establishing the same. This plea cannot be accepted at all since the father of the accused was very senior police officer and so the accused could not have been pressurized to write anything which was not true. The trial Court has found that the senior police officers had been obtaining apologies from the accused since they never wanted to book him for the complaints lodged by the deceased which they wanted to bury under the carpet everytime. The trial court has observed more than once in its judgment that the local police including officers

of the rank of ACP had been helping the accused Santosh Kumar Singh at every stage in order to please the father of the accused who was a very senior police officer and also that if the police had taken the complaints lodged by the deceased seriously she would have been alive. It has also been observed that if in place of the accused there had been any other ordinary citizen stalking the deceased he would have been immediately put behind the bars but in the case of this accused he was simply let off everytime by the police after he tendered apologies and undertook not to repeat his misdeeds which undertakings he never intended to honour and sometimes by pursuading the deceased to keep her complaints in abeyance. We fully endorse this view of the trial Court. The trial Judge has also observed that there was no reason for the deceased to have made false complaints against the accused and no woman of her status would proceed in this manner unless the harassment was unbearable. On an independent evaluation of the evidence on these three circumstances we have also come to the conclusion that the respondent had a strong motive for the commission of the crime alleged to have been committed by him. Circumstances no.1, 2 and 3 are thus held to have been proved beyond any shadow of doubt by the prosecution.

31. Circumstances No.4 and 5 are also connected with each other and so are taken up together. Circumtance no.4 is regarding the accused having been seen in the morning on 23.1.1996 at the Delhi University with his motorcycle and a black helmet with black visor. That day the respondent started from his home with the firm determination that he would either have the deceased that day or would finish her off as otherwise he had no business to be present in the University when he had already undisputedly completed his Law course and had become an advocate. As per the prosecution case he started following her from morning till evening when he went to her house around 4.50 p.m. He was seen outside the house of the deceased by her immediate neighbour Kuppuswamy(PW-2) to achieve his goal. This circumstance regarding the respondent having been seen outside the flat of the deceased in Vasant Kunj around 4.50 p.m. on 23/1/96 is circumstance no.5. As per the prosecution case since the respondent could not achieve his goal he first raped the deceased and then killed her also. The relevant witnesses to establish circumstance no.4 are PW-32, the personal security officer provided to the deceased because of constant harassment to her by the respondent, and PW-16 Manju Bharti, advocate. PW-32 has stated that he saw the accused pre-noon in the University on his black motorcycle wearing black colour helmet with a black visor. No doubt, the witness was confronted with his statement, Ex. PW-32/DA, of having not stated that the Respondent-accused was on his black motorcycle wearing a black helmet and black visor, but this does not detract from the fact that PW-32 spoke of the presence of the accused at the University on 23.1.1996. PW-16 also deposes to having seen the accused in the University on 23.1.1996 in the morning. The criticism of counsel for the respondent to the effect that since PW-16 does not refer to the presence of pw- 32 at the university PW-32 ought not to be believed does not cut ice. PW-32 in fact stands corroborated by PW-16. Even otherwise, PW-32, who was the Personal Security Officer of the deceased, had

every reason to spot the accused amongst those present in the University since he had been assigned to take care of the deceased who had been making complaints against the accused-Respondent. His presence at the spot was natural in the performance of his duty. Both these witnesses had no reason to falsely testify against the respondent and they could not be discredited in cross-examination. No suggestion was put to them that the respondent was not in the University that day as deposed by them. In these circumstances and considering the fact that the respondent had been constantly stalking the deceased it was for him to explain the purpose of his visit to the University on 23 rd January when he was not studying there. He has not come forward with any explanation. It was held by the Supreme Court in Pershadi vs U.P.State, AIR 1957 S.C. 211 that where in a murder charge the accused falsely denies relevant facts which stand conclusively proved the Court would be justified in drawing an adverse inference against the accused. So, in the present case it is to be inferred that the respondent on the morning of 23rd January had gone to the University only to follow the deceased upto her home to fulfil his sinister designs.

32. The respondent followed the deceased upto her house that day and in the evening, when her parents were not at home, he entered her house and raped her and then killed her. The accused was seen right outside the flat of the deceased at about 4.50 p.m. by her immediate neighbor PW-2 Kuppuswamy and sometime thereafter she was found dead in her house by her personal security officer PW-32 HC Rajinder Singh. PW-2 Kuppuswamy has deposed that he saw the accused with his black helmet and visor at 4.50 p.m. outside the house of the deceased on 23/01/96. As per the prosecution case thereafter the respondent went inside the flat of the deceased and she being alone he did with her what he had all along been desiring to do i.e to have sexual relationship with her and to put an end to the chapter once for all lest he should be caught for that act, he assaulted her with his helmet and then strangulated her to death. Mr. Naseem's criticism that Kuppuswamy did not state before PW-48, Inspector Lalit Mohan on 23rd itself that he had seen the respondent outside the house of the deceased is of no consequence since PW-48 did not record the statement of PW-2 even though PW-2 claims that he had narrated everything to PW-48 on 23rd itself. His statement was recorded for the first time, on 4.2.1996 by PW-50, A.K.Ohri who learnt about Kuppuswamy having seen the accused at the house of the deceased from the brother of the deceased to whom Kuppuswamy had narrated the facts. Kuppuswamy is the next door neighbour of the deceased and is close to the family of the deceased. On 1.2.1996 the Investigating Officer who, on that day, contacted the mother of the deceased at her residence was informed by Hemant Mattoo, brother of the deceased, that he had been told by Kuppuswamy that he(Kuppuswamy) had seen the accused near the door of the house of the deceased shortly before the occurrence. PW-50, A.K. Ohri, tried to contact Kuppuswamy, but he was not available. Since the Investigating Officer was busy in other related matters which too needed investigation, it was only on 4.2.1996 that he was able to examine Kuppuswamy. There is nothing unusual or unnatural in recording the statement of Kuppuswamy on 4.2.1996. The criticism of learned

counsel for the Respondent-accused that the statement of Kuppuswamy should have been recorded earlier cannot, in any manner, water down the statement of PW-2, Kuppuswamy who, in no uncertain terms, identifies the accused having been present in front of the house of the deceased at around 4.50 p.m. on 23.1.1996. We may point out that a witness cannot be faulted for his not being examined earlier and the explanation, if at all, can be got only from the Investigating Officer, as has been held by the Supreme Court in State of U.P. vs. Satish 2005(1) JCC 408. It was for the Investigating Officer to collect evidence and conduct investigation; it was for him to see what is more important and how to go about the investigation. The statement of PW-2, Kuppuswamy, cannot be brushed aside nor challenged on the ground of it being recorded late. We find that Kuppuswamy is a reliable witness who has seen the accused around 4.50 p.m. outside the flat of the deceased. This witness, in fact, has claimed that on the date of incident itself in the night he had informed the police about what he had seen that day. He was referring to PW-48 Inspector Lalit Mohan who, however, does not claim that Kuppuswamy had informed him that day about the presence of the accused outside the house of the deceased in the evening. As far as Inspector Lalit Mohan is concerned the learned trial Court has severely criticized his conduct during the investigation and it has been observed in the impugned judgment in para no. 205 that Inspector Lalit Mohan was instrumental in creating false defence for the accused. It was also observed by the trial Court that Inspector Lalit Mohan was obliging the father of the accused being a senior police officer of Delhi Police and further that the approach of Lalit Mohan suggested that Rule of Law was not intended to be applicable to a police officer or his near relatives and they are immune from the Rule of Law and in this case Lalit Mohan has been unduly favourable towards the accused because his father was a senior police officer and that sensing the conduct of Lalit Mohan the Commissioner of Police had sought transfer of investigation to the CBI. So it was this initial investigating officer who unscrupulously did not record the version of Kuppuswamy. The dubious conduct of Inspector Lalit Mohan, however, cannot spoil the prosecution case. It was held by the Supreme Court in State of Karnataka vs K.Yarappa Reddy, 2000 SCC(Crl.) 61 that the Courts should not be influenced by suspicious roles played by investigating officers during investigation and that criminal justice should not be made a casualty for the wrongs committed by the investigating officers. The statement of Kuppuswamy that he had told the police everything he had seen on the day of incident gets fortified from the fact that on that day itself the accused was called at the police station which must have been done because of Kuppuswamy having informed the police about his having seen the accused outside the house of the deceased that evening. The trial court has found Kuppuswamy trustworthy and has also observed that no importance can be given to the testimony of Inspector Lalit Mohan and we also do not have any reason to disbelieve Kuppuswamy. These two circumstances are also decided in favour of the prosecution.

33. Connected with the sequence of events is Circumstance No. 6, namely, that the accused reached late to attend his class at Indian Law Institute, Bhagwan

Dass Road. PW-15 Arun Kumar, advocate, has deposed that the accused was studying with him at the said Institute and the classes were generally from 6.10 p.m. to 7.30 p.m. and on 23.1.96 the accused had come late by about 5-10 minutes. The trial court while dealing with this circumstance has chosen not to give much importance and has brushed aside the same as being trivial. However, we find that in the absence of any explanation by the accused as to why he attended class late at the Indian Law Institute on 23.1.1996, the circumstance would be of significance since at 4.50 p.m. he was present at the house of the deceased at Vasant Kunj and his late coming to ILI that day would strengthen his presence at Vasant Kunj since ordinarily the accused would have been attending class at the Indian Law Institute on time unless he was prevented by any unforeseen circumstances and his coming late to the class has been testified by PW-15 who is a classmate of the accused from the time they were pursuing Law Course together and who testifies to the effect that on 23.1.1996 the accused had come late to the class. In circumstances of this case, his late coming to attend class at Indian Law Institute even for a few minutes assumes great significance and that delay the accused has failed to explain. On the contrary, in his statement under Section 313 Cr.P.C. he has come out with a plea that on that day he had, in fact, reached the Indian Law Institute before time. This plea taken by the accused, in view of the reliable testimony to the contrary of his own classmate PW-15, cannot be accepted. The trial Court has, however, for a reason which on the face of it is palpably contrary to the record held PW-15 to be unreliable. It has been observed by the trial Court while dealing with this circumstance that PW-15 in his testimony has deposed that on the day of the occurrence when the accused reached ILI at about 6.20 p.m. he (the accused) had crepe bandage on the finger of his right hand and that statement was false since when in the night he was brought to police station and then got examined by the doctor no such bandage was noticed on his finger. We have carefully read the evidence of this witness which is quite brief and find that he had not made any such statement. On the contrary it was elicited from him in his cross-examination on behalf of the accused that 7-8 days prior to 23rd January he had seen crepe bandage on the finger of right hand of the accused. This suggestion was put to him to show that actually the accused had got injured prior to 23rd January and for this reason he was then cross- examined by the special public prosecutor when he admitted that he had not told the police that he had noticed bandage on the finger of the accused. We are of the view that this suggestion put to this witness in cross-examination on behalf of the accused and the answer elicited from him instead of helping the accused falsifies his plea that he had fractured 5th metacarpal bone of his right hand on 14th January because if that had been true the accused would not be having crepe bandage on his finger since the metacarpal bone is a bone under the palm and due to the fracture of that bone bandage would not have been put on the finger. This has been observed even by the trial Court. So, the statement of PW-15 in his examination-in-chief could not be ignored for the reason given by the learned trial Judge. In fact, we have no hesitation in concluding that since the respondent has taken a false plea that he had sustained injury on 14th January that fact can be used as an additional link in the chain of

circumstances otherwise relied upon by the prosecution. We are also of the view that the accused who was a Law graduate and a practicing advocate after committing the crime decided to attend his class also in order to create a plea of alibi thinking that it might be useful for him in case he is finally booked by the police ignoring the fact that he was a son of an IPS officer. We, however, reject this plea of the accused and decide circumstance no. 6 also in favour of the prosecution.

34. The trial court while dealing with circumstance No.7 has held that the mother of the deceased having expressed her suspicion at the accused of having committed the crime immediately after the incident is also a relevant circumstance. Mr. Naseem has attacked this finding on the ground that this circumstance is quite innocuous and cannot be used as an incriminating circumstance. We are of the opinion that though this may not be a very strong and a compelling circumstance by itself, however, the same cannot be ruled out as being innocuous and irrelevant for it would be admissible under Section 6 of the Indian Evidence Act as being a relevant fact and it is a circumstance that can be pressed into service by the prosecution.

35. Now we come to circumstances no. 8 and 12. They are being taken up together as they are inter-linked to a great extent. The case of the prosecution is that when the accused was called at the police station on the night of the incident for interrogation there was swelling and tenderness on his right hand (this aspect is covered under circumstance no.8). He was got medically examined and it was found that he had a fracture of the 5th metacarpal of right hand. According to the case of the prosecution this injury, the accused (respondent herein) had sustained while brutally assaulting the deceased with his helmet Ex.P-3. The explanation given by the accused was that he had suffered this injury as a result of a fall from motorcycle on 14.1.1996. This explanation according to the prosecution taken by the accused even in Court is false and so it is also an additional link in the chain of circumstances relied upon by the prosecution(circumstance no. 12 noticed by the trial Court). The MLC of the respondent Ex. PW-23/B prepared at the time of his medical examination on the night of 23rd and 24th January shows a fracture of the 5th metacarpal bone of right hand of the accused but there is no external injury on the hand. The doctor has specifically stated that this injury can be caused by the hand 'hitting an object with great force'. No doubt, the accused has endeavored to show that he was injured on 14.1.1996 by a fall from his motorcycle, but the nature of the injury negates this defence. Had there been a fall from the motorcycle in which the hand of the accused struck any object with great force, there was bound to be a visible external injury, the scars of which would not have disappeared so soon. It may be of interest to note that there was no other injury on the person of the accused. Even the X-Ray which the accused claimed to have got done on 14-1-96, when compared with the X-ray of 24th January could not be stated to be of the same person since they were taken from different angles. The so-called X-Ray of 14.1.1996 was given to the Investigating Officer by the father of the accused, the authenticity of which has

not been established. The trial court has come down heavily on the prosecution for not placing on record the material collected from the Diagnostic Centre and the Hospital regarding the treatment received by the accused for the injury allegedly sustained by him on 14.1.1996. Learned trial Judge, however, could not have blamed the prosecution in this regard since it was for the accused to have led evidence in support of his plea of fall from motor cycle on 14.1.1996 which the accused did not do. The trial court itself, in fact, observed that the accused did not assist the Court in discharging the onus which was upon him to justify the defence taken by him in the matter of alleged injury but at the same time erroneously found fault with the prosecution for having been unfair. The trial court also went wrong in holding that the Investigating Officer directly sought opinion of the doctors of Safdarjung Hospital regarding the cause of injury of the accused and its duration without going through the Medical Superintendent which fact is contrary to the letter Ex.PW-28/A dated 19.2.1996 addressed to the Medical Superintendent of Safdarjung Hospital. The Court was wrong in holding that the prosecution has not been fair in presenting its case which has been detrimental to the defence when it has itself held that the onus of proving the injury allegedly suffered on 14.1.1996 was on the accused and that the accused has not discharged that onus. It is also quite surprising that the learned trial Judge himself has come to the conclusion that the injury on the hand of the accused appeared to be fresh and at the same time has also observed that since the police had concealed from Court, material pertaining to the treatment received by the accused on 14th January the plea of the accused that he sustained injury on 14th January also appeared to be plausible and so this circumstance could be considered both ways. We cannot approve of the said contradictory findings of the trial Judge and we are of the view that it could not have been said by the Judge that two views were possible regarding this circumstance. The finding of the trial court regarding circumstance no. 8 is clearly perverse.

36. The trial court has needlessly rejected the opinion of the Radiologist, Dr. Ashok Charan, by taking upon itself the exercise of re-writing medical jurisprudence contrary to the expert opinion of the Radiologist. There is no dispute that the injury on the hand of the accused was noted by Dr. Ranjan Wadhwa who, in his report Ex.PW-23/B, noticed swelling on the right hand of the accused on dorsal and lateral aspect tenderness, crepitus on 5th metacarpal. The injury was opined to be fresh. In the absence of any evidence to show that this injury had been caused on 14.1.1996, there was no necessity for the Prosecution to have gone beyond leading of evidence to the effect that on 23.1.1996 the accused had an injury on his right hand of the nature as has been deposed to by the medical Experts and that the injury was fresh in nature. The reasoning of the trial court to the effect that the prosecution has failed to negate the case of the defence is perverse since the onus to prove the injury of 14.1.1996 lay on the accused who claimed that such an injury had been caused on that day. It was not for the prosecution to establish in the negative but to prove its case in the positive as put forth by it, namely, that the aforesaid injury

on the right hand was caused by exerting great force which the accused did when he hammered the deceased to inaction by causing injuries with a blunt object. In this case, according to the prosecution, it was by the helmet held by the accused in the right hand when he was assaulting the hapless girl.

37. It has already been noticed above, that the expert opinion regarding the test on the helmet indicates that the helmet Ex.P-3, which the respondent admitted to be his, has been subjected to great force on both sides. We have already rejected the plea of the accused that he had sustained injury on 14.1.1996. So, we will be fully justified in concluding that the respondent had sustained the injury on his hand while assaulting the deceased mercilessly with his helmet. Regarding the taking of false plea by the respondent the learned trial Court has while dealing with circumstance no. 12 categorically held that the accused had also taken another false plea that the deceased had been lodging false complaints against him and he never harassed her and that his defence on these aspects was false. This was absolutely a correct finding and we are also of the same view on our independent analysis of the evidence adduced by the prosecution. It was held by the Supreme Court in State of Tamil Nadu vs Rajendran, AIR 1999 S.C. 3535 that if in a case of circumstantial evidence the accused takes a false plea then the same becomes an additional link in the chain of circumstances. Circumstance No.8 is also accordingly decided in favour of the prosecution to be incriminating one and fully established and taking of false pleas by the respondent becomes an additional link the chain of circumstances.

38. We now come to circumstance no. 9 which is the finding of the DNA(Dioxyribo Nucleic Acid) test to the effect that in the vaginal swabs and vaginal slides of the deceased and on the underwear which she was found to be wearing at the time of the incident semen of the accused was present. According to the prosecution the DNA test conclusively established the guilt of the accused by itself and the DNA report is sufficient to conclude that the respondent had not only committed rape upon the deceased but had also murdered her. Importance and utility of DNA test is now too well known in criminal as well as civil matters. This test is conducted during investigation of criminal cases mainly in cases of rape and murder like the present one. In rape cases this test is conducted for establishing the presence of semen of a suspect in the vagina of the victim and also on her undergarments etc. DNA test is also very useful for establishing the identity of a dead person whose body is recovered which is not in an identifiable condition because of decomposition etc. DNA test is also carried out to determine the paternity of a child whenever that dispute arises in criminal cases as also in matrimonial disputes. The learned trial Court has made the following observations regarding DNA test in paras no. 376 and 377 of its judgment:

> "376. The forensic use of DNA started with the work of Alec Jeffrey, a geneticist at the University of Leicester in Britain's Midland, in 1984. Jeffrey invented the techniques that took human identification from the

laboratory to the courtroom. With his co-workers, he demonstrated that forensic samples, dried stains several years old, contained sufficient DNA to yield conclusive results. Jeffrey proved that even small fragment of DNA molecules were virtually unique to individuals. He called the process he invented 'DNA Finger Printing'. The finger prints produced by the test bears a superficial resemblance to a supermarket bar code. With the difference between individuals revealed by the spacing between the 15 or 20 lines called band. Such differences between specimens are measured by a process called Restriction fragment length Polymorphism(RELP) Analysis.

377. Jeffrey applied it to an immigration case. A boy from Ghana sought to immigrate to Britain claiming that his mother was already a resident. Convention blood tests were not conclusive beyond confirming that the two could be related. DNA analysis put beyond reasonable doubt that relationship was as claimed and the Home Office put stamp of its approval on the new technology. The technology was, thus extended to from site of crime to Court of law. These observations of the trial Judge were not disputed by the learned counsel for the respondent.

39. It was observed by the Supreme Court in the case of Smt. Kamti Devi vs. Poshi Ram, AIR 2001 SC 2226 that "the result of genuine DNA test is said to be scientifically accurate."

40. When this incident took place DNA test used to be conducted at the Centre for Cellular and Molecular Biology (CCMB) at Hyderabad. During those days one Dr. Lalji (PW-49) was the Deputy Director of the Institute and DNA test used to be conducted by him or under his supervision. He can be said to be the master of DNA technology as far as India is concerned. His ability as a scientist in DNA field was not doubted on behalf of the respondent by his counsel Sh R.K.Naseem during the course of arguments either before the Trial Court or before us and this is what Dr.Lalji claimed about himself when he came to depose before the Trial Court :-

"I did my B.Sc. M.Sc. and Ph.d. from Banaras Hindu University. I was in Edenburgh University, Scotland for 13 years. I have been involved in DNA technology since 1974. I returned to India in 1987 and joined the Centre for Cellular and Molecular Biology, Hyderabad. I have developed indigenous probes and modified techniques of DNA fingerprinting which is being used in this country. The Govtg. Of India has now set up its new institute of DNA fingerprinting and Diagonistic of which I am officer on special duty. We have received nearly 300 cases where we have applied DNA fingerprinting techniques. Evidence has been accepted in many courts and High Courts in the country. In a recent case, experts were brought in from U.K. And I was asked to give sample for the tests to be repeated in UK. Based on our evidence British expert's opinion was rejected and the verdict was given in favour of our report. My opinion has been upheld by Kerala High Court, Andhra Pradesh High Court and Bombay High Court."

41. Recently the Supreme Court in Kamalanantha and Ors vs. State of Tamil Nadu 2005 (5) SCC 194 also noticed the background of Dr.Lalji in para 58 of the judgment as under :-

> "Dr. Lalji Singh, Deputy Director CCMB Hyderabad, was examined as PW 59 . Dr. Lalji Singh is working as the Deputy Director at the Centre for Cellular and Molecular Biology at Hyderabad. This centre is on the Constituent laboiratores of the Council of Scientific and Industrial Research under the Department of Science and technology, Government of India, Dr. Lalji Singh initially joined the Centre as Scientist E.II and was subsequently promoted as Scientist F (Deputy Director) from 1992. He is B.Sc Msc and PH.d qualified from Banaras Hindu University, having obtained his doctorate in the year 1971. He had worked in Calcutta University as a Pool Officer from 1971 to 1974. He was awarded Commonwealth Fellowship to go to the United Kngdom and he was working in the Institute of Animal Genetics, University of Edinburgh from 1974 to 1987, He cane to India and joined CCMB, Hyderabad on 3.6.1974 to 1987. He came to India and joined CCMB, Hyderabad on 3.6.1987. According to Dr. Lalji Singh, he had published 57 scientific papers in internationally reputed journals. He was awarded the Banaras Hindu University Gold Medal in 1966, the Science Academy Medal for Young Scientists for the year 1974 and various other awards like the CSIR Technology Award for the year 1992 for Biological Sciences, Professot S.P. Roy Chaudhuri 75th Birthday Lecture Award for the year 1994. Professor Viswanathan Memorial Lecture Award for the year 1995, VASVIK Research Award for Biological Sciences and Technology for Science for the year 1994. He is the elected Fellow of the Indian Academy of Science for the year 1989, Fellow of National Academy of Science since 1991 member of various other organisations like the Indian Society for Cell Biology, etc. According to him he had given opinion in 96 cases and has also given evidence in 5 cases in various courts, including Rajiv Gandhi Assassination case."

42. In the present case the prosecution has claimed that the respondent Santosh Kumar Singh had raped and then murdered Priyadarshini Mattoo. To prove that the respondent had raped the deceased DNA test was got conducted by the CBI. For the purpose of DNA tests the vaginal swabs, vaginal smeared slides prepared by the Autopsy Surgeon at the time of post mortem examination of the dead body of the deceased and her underwear which she was found to be wearing at the time of the incident were sent to CCMB, Hyderabad along with the blood sample of the accused preserved in four vials.

43. The blood of the accused was taken during the investigation period at RML Hospital, Delhi. The accused never raised any objection to the taking of the blood from his body.

44. PW-49 Dr.Lalji deposed that DNA test conducted in the present case was

an exhaustive DNA fingerprinting test of the exhibits and sample blood of the accused and also that the test was carried out by him and his colleague Dr. G.V Rao (CW-1) and they came to the conclusion that the semen was present on the underwear of the deceased and also in the vaginal swab and vaginal slide of the deceased and that the DNA profiles of the vaginal swabs/vaginal slides matched with the DNA of the blood of the accused Santosh Kumar Singh and further that the results of the HLA DQ alpha typing and PCR analysis proved beyond any reasonable doubt that the accused Santosh Kumar Singh is the source of the vaginal swab, vaginal smeared slides and the semen stain on the underwear of the deceased and, therefore, the rapist of the deceased. Dr. Lalji proved his report as Ex. PW-49/B.

45. As noted in the submissions of learned counsel for the accused, he has supported the impugned judgment to the effect that there is no evidence of rape or sexual intercourse. There is apparent tampering with the exhibits and that proper tests were not conducted while performing the DNA tests and, therefore, the opinion of the experts regarding matching of signature of DNA is neither reliable nor trustworthy. There is no doubt that in the postmortem report Ex. PW 33/B, PW 33 Dr. A.K. Sharma has held that while conducting postmortem on local physical examination of private parts, it was noticed that black, curly, non-matted pubic hair and hymen intact, no tearing present, admitting one finger only. He has also given his opinion that the deceased has not been subjected to sexual intercourse. However, it is the DNA test conducted on the vaginal swabs, vaginal slide and underwear of the deceased, compared with the blood sample of the accused that the experts have come to the conclusion that there is sperm present in the vaginal swabs and the DNA of the sperm so found present, matches with the DNA of the accused obtained from his blood sample. Dealing with the question of tampering with the exhibits, we find that there was no possibility of tampering with the exhibits nor has any tampering being done. It is in evidence that the bundle of clothes of the deceased prepared by the doctors at the time of postmortem examination, the vaginal swabs and vaginal slide taken at the time of the postmortem were sealed by the concerned doctor at the 'Safdarjung Hospital'. The same sealed exhibits were taken to the CCMB, Hyderabad where they were received duly sealed. There is nothing on record to show that the seals were ever tampered with, nor was such a suggestion made to any of the doctors concerned or the police officials having received the samples and transported the same to the CCMB, Hyderabad. Similar is the case with the underwear of the accused, P-10 as also the blood sample of the accused.

46. The blood sample of the accused was taken at 'Ram Manohar Lohia Hospital' which was kept in ideal conditions, sealed and handed over to PW-39, SI Ranbir Singh Shekhawat, who then transported the same to CCMB, Hyderabad. The samples were received at CCMB, Hyderabad with seals intact. There is no suggestion to any of the witnesses that the seals were not intact. The authenticity of the seals being intact has been deposed to by PW-48, Dr. Lalji and CW-1 Dr. G.V. Rao, the two scientists who conducted the DNA test at

CCMB, Hyderabad. The trial court though has held that the possibility of tampering cannot be ruled out has not elaborated as to what is the nature of tampering and its effect. We find that there is no evidence to show that there was any tampering with the exhibits forwarded to CCMB, Hyderabad nor any reason for tampering with the same. In our opinion, the witnesses had no animus nor would it have advanced the case of the prosecution in any way by resorting to tampering.

47. The argument of learned counsel for the respondent that tampering has been done with a view to secure evidence to the prejudice of the accused is neither here nor there. He has submitted that the blood of the accused drawn at 'Ram Manohar Lohia Hospital' was removed during transit or elsewhere and then mingled with the exhibits obtained from the 'Safdarjung Hospital' of the deceased, namely, the vaginal swabs, slide and the underwear of the deceased to bring about a result that would show that the DNA on the exhibits of the deceased and that of the accused matched. With very great respect to the learned counsel, we are unable to appreciate this argument. It is in evidence that from the vaginal swabs/slide, what was segregated was the sperm which sperm could never have been that of the deceased. It was the sperm that was broken down and DNA extracted therefrom. The DNA of the sperm matched with the DNA of the blood of the accused. Sprinkling of blood on the vaginal swabs would have no effect whatsoever, even if assuming this has been done. Therefore, the criticism of the learned defence counsel is best rejected. We may also mention here that the counsel for the accused at no stage of the trial and nor before us challenged that the blood drawn at 'Ram Manohar Lohia Hospital' and conveyed to the CCMB, Hyderabad as not of the accused. This being an undisputed fact, the test conducted to ascertain the DNA of the blood as also the sperm in the vaginal swabs cannot be faulted with. We also note that at no stage did the accused lead any evidence to the contrary nor sought to have an independent DNA test conducted to counter the report of Dr. Lalji and Dr. G.V. Rao.

48. The next question that engages us is whether the DNA test conducted was proper? It is in evidence of Dr. Lalji that the method used and the test conducted in determining and arriving at the conclusion were done as per standard practice as also per scientific technology suitable for such tests. The trial court has elaborately introduced its learning based on literature which, to a large extent, was never even put to the expert witnesses and even otherwise there is no positive evidence on record to show that the test so conducted by the experts were perverse and/or not in keeping with the standard scientific methodology. We may make useful reference to judgments of the Supreme Court in AIR 1954 SC 28; Sunder Lal Vs. State of Madhya Pradesh, AIR 1957 SC 589; Bhagwan Dass Vs. State of Rajasthan wherein it has been held by the Supreme Court that findings of an expert witnesses cannot be set aside by a court by making a reference to some literature/book without confronting the expert with them and directing his opinion on it. In another case decided by the Hon'ble Supreme Court in AIR 1982 SC 1157; Gambhir Vs. State of Maharashtra, it was

held that the court should not usurp the function of an expert by arriving at its own conclusions contrary to the one given by the expert witness. There has been great effort made by counsel for the accused to discredit the test conducted as such by referring to either possibility of contamination and/or with reference to snippets of replies given by the experts in cross- examination but we find that at no stage has any of the expert witness said that the tests conducted by them have given a wrong result or there is a possibility that the test so conducted by them would have given a wrong result. On the contrary, they have categorically ruled out any such possibility of contamination and/or erroneous results.

49. Another interesting argument raised by learned counsel was that the DNA test is reliable to the extent of 99.3 per cent which he supported from the evidence of the experts named above. In other words, he wanted to create a doubt that there is a possibility of the respondent being one amongst 0.7 per cent of the persons whose DNA might match. We have given our serious consideration to this aspect as well but found that the possibility is so remote that it need not detain us further. However, we are not basing our judgment and conclusions merely and solely on the results of the DNA test but have taken other highly incriminating circumstances into consideration as well. Circumstance No. 9 is also held in favour of the appellant/Posecution.

50. Coming to Circumstance No. 11, it is in evidence that the deceased had 19 injuries on her person besides three broken ribs, are suggestive of massive force used. There was a tear mark over the left breast region of the T-shirt of the deceased. Photographs Ex. PW-25/A-7 to A-9 of the deceased taken at the spot show that her T-shirt was folded upto the brassiere which is clearly visible in the photos. These are suggestive of molestation. It is in evidence that the accused was seen on 23.1.1996 with a black helmet and a visor. It is also in evidence that the helmet, when produced by the accused, did not have a visor. It is also in evidence that the helmet, when subjected to test, showed that the same had been subjected to great force on both sides. The explanation given by the accused that the helmet suffered a damage as a result of the motorcycle accident on 14.1.1996 does not sound plausible. There were no visible signs of an accident seen on the helmet, in particular on both sides. As a matter of fact, even the accident of 14.1.1996 has not been proved. Use of a blunt object to cause injury to the deceased cannot be ruled out, in particular when the nature of injuries, the use of force and the injury suffered by the accused on his right hand show that the helmet was used with great force as a weapon to cause injuries to the deceased and in that process the hand of the accused was injured.

51. Now, we come to circumstance No.10. As per the prosecution case the accused on the day of incident had gone to the house of the deceased on his motor cycle and he was having a helmet Ex. P-3 which had a visor fixed on it. While assaulting the deceased with that helmet the visor was broken and some of its broken pieces were found at the scene of crime with the blood of the

deceased on them. As per the further prosecution case when on 25-1-96 the police took into possession the helmet Ex. P-3, which the accused has admitted to be his helmet only, it had no visor on it. As per the CFSL report the said helmet had some blood on it when it was examined in the laboratory. The accused in his statement under Section 313 Cr.P.C. has claimed that his helmet had got damaged and visor was broken on 14-1-96 when he had fallen down from his motor cycle. We have already held that the accused had taken a false plea in this regard. Therefore, the only inference which we can draw in the facts and circumstances of the case is that the visor of the helmet of the accused was broken while he was assaulting the deceased with his helmet. The learned trial Court has observed at page no. 403 of the judgment under challenge that "it is not disputed that the helmet which has been seized had broken visor". At the same page it was also noticed by the trial Court that spec of blood was noticed on the helmet at the CFSL and also that the pieces of visor (which were seized from the spot) had 'A' group blood. The learned trial Court has further observed while giving his findings on circumstance no. 10 that on 23-1-96 the accused was noticed by PW-2 Kuppuswamy with a helmet with its visor outside the house of the deceased and further that the broken pieces of visor were recovered at the scene of crime besmeared with the blood of the deceased. The learned trial Court has also observed that the unusual impact noticed on the helmet Ex. P-3 when it was examined in CFSL is suggestive of a impact of high momentum on the person of the deceased. It has also been observed by the trial Court that the visor was broken after the crime. On our own analysis of the evidence in this regard we are also of the view that the helmet of the accused had got damaged and its visor was broken on 23rd January, 1996 while it was being used for assaulting the deceased and that is why on 25-1-96 when the helmet was seized it had no visor on it.

52. Another aspect of the matter which we find that the trial judge has relied upon is the influence of the father of the accused in derailing the initial investigation. This aspect is covered under circumstance no.13. The very fact that PW-48, Inspector Lalit Mohan did not record the statement of PW- 2, Kuppuswamy on the date of occurrence that the Kuppuswamy had narrated the incident to them, is indicative of the softness shown by brothers in uniform and that conduct of the policeman has been very rightly and severely commented upon by the trial court which we find no reason to differ with. Another aspect to which our attention has been drawn is the conduct of the local police to the repeated complaints made by the deceased regarding the misbehaviour and harassment of the accused. None of the police officers to whom such complaints were made had reacted as was expected of them. Obviously, at every stage they had in their mind that the accused was son of their superior officer. We may also notice the observations of the learned trial court in the last para of its judgment which are as under :

> "At last it is felt that approach and working of subordinate staff of Delhi Police suggests that Rule of Law is not meant for those who enforce the law

> nor for their near relatives. Is it not that such an approach is encouraging the children of such persons who has the machinery of enforcement of law that they too can commit the crime with impunity. Should not makers of law consider that where crime is committed by such person, there should be a machinery which is uninfluenced and independent of such persons who believe in fairness. Should the machinery of the Commissioner of Police not consider should such subordinate staff as in this case be assigned the duties as an agent of law to assist the administration of justice"

The trial Judge was referring to the influence of the father of the accused of the present case who was a senior police officer(IPS). The trial court had earlier in its judgment also observed that certain police officials in this case have been unfair in order to save the accused because his father was a senior police officer in Delhi Police.

53. From an overall analysis of the circumstances that have been discussed above and held to have been proved beyond any doubt by unimpeachable evidence, we are of the view that those circumstances form a chain so complete which leads us to the only conclusion that it is the respondent Santosh Kumar Singh who had committed rape upon the deceased and then murdered her. The circumstantial evidence in the case is absolutely inconsistent and incompatible with the innocence of the respondent. There is no circumstance brought on record by the respondent suggesting his innocence or the possibility of anyone else having committed the said ghastly acts. The trial court, however, quite amazingly after holding almost all the crucial circumstances in favour of the prosecution has ordered unmerited acquittal of the respondent by taking a perverse approach in the matter. By acquitting the respondent despite being convinced that there was no doubt in the prosecution case (at least for the offence of murder) the trial Court has mauled justice, its decision has shocked the judicial conscience of this Court.

54. In the result, the State appeal succeeds. The judgment dated 3rd December, 1999 of the trial Court in Sessions Case No.1/97 pertaining to FIR No.50/96 PS Vasant Kunj, (RC.1(S)/96-SIU.V/SIC.II/CBI/SPE/New Delhi) is set aside and consequently the respondent, Santosh Kumar Singh, stands convicted for the commission of offences punishable under Sections 302 and 376 Indian Penal Code.