SUPREME COURT OF INDIA

Sonvir @ Somvir

Vs.

State of NCT of Delhi

Crl.A.No.958 of 2017

(Ashok Bhushan and Indu Malhotra,JJ.,)

02.07.2018

JUDGMENT

Ashok Bhushan,J.,

1. I have gone through the elaborate judgment prepared by Sister Justice Indu Malhotra.

2. The appellant has been convicted under Sections 302, 392 read with Section 34 of the IPC by Addl. Sessions Judge-02:South East Saket Court, New Delhi. The appeal against the conviction has also been Si9“ismissed by the Delhi High Court by judgment dated on 10.12.2014. Detailed facts of the case including prosecution case and the evidence on record have been elaborately noted by Sister Justice Indu Malhotra in her judgment. Hence, I feel no necessity to repeat the same. After elaborate consideration of entire evidence on record Sister Justice Indu Malhotra has come to the conclusion that appeal should be allowed and appellant be acquitted.

3. I fully agree with the above view of the Sister Justice Indu Malhotra. However, an important question of law pertaining to interpretation of Sections 4 and 5 of the Identification of Prisoners Act, 1920 being involved in the present appeal, I proceed to consider the same and give my reasons.

4. Now, I proceed to examine the provisions of the Identification of Prisoners Act, 1920.

5. The statement of objects and reasons provides a fair idea of the purpose and object for which the Identification of Prisoners Act, 1920 (hereinafter referred to as '1920 Act') was enacted. The statement of objects and reasons reads:

> "The object of this Bill is to provide legal authority for the taking of measurements, finger impressions, foot-prints and photographs of persons convicted of, or arrested in connection with, certain offences. The value of the scientific use of finger impressions and photographs as agents in the detection of crime and the identification of criminals is well known, and modern development in England and other European countries

renders it unnecessary to enlarge upon the need for the proposed legislation. The existing system by which the police in India takes finger impressions, photographs, etc., of criminals and suspected criminals is void of legal sanction, except as regards registered members of criminal tribes, in whose case provision exists for the taking of finger impressions in section 9 of the Criminal Tribes Act, 1911 (III of 1911). The need for legalizing the practice has long been recognised, but it was not thought expedient to take the matter up so long as no practical difficulties arose. Instances have recently been reported to the Government of India where prisoners have refused to allow their finger prints or photographs to be taken. With a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements, etc., which is a normal incident of police work in India as elsewhere, on a regular footing. No measurement, etc., of any person will be taken compulsorily unless that person has been arrested."

6. The above objects and reasons notice that under the existing system the Police in takes finger impressions, photographs etc. of criminals and suspected criminals, which is void of legal sanction. Thus, the above mischief was sought to be remedied by the 1920 Act. In last part of the statement of objects and reasons the purpose has been clearly mentioned i.e. "with a view to prevent such refusals in future it is considered necessary without further delay to place the taking of measurements, etc., which is a normal incident of Police work in India as elsewhere, on a regular footing".

7. Now, we come to Section 3, 4 and 5 which are relevant for the present purpose. Section 3 provides for taking of measurements of convicted persons which is as follows:

"3. Taking of measurements etc., of convicted persons.- Every person who has been-
(a) convicted of any offence punishable with rigorous imprisonment for a term of one year or upwards, or of any offence which would render him liable to enhanced punishment on a subsequent conviction; or

(b) ordered to give security for his good behaviour under section 118 of the Code of Criminal Procedure, 1898 (5 of 1898)shall, if so required, allow his measurements and photograph to be taken by a police officer in the prescribed manner."

Section 4 deals with taking of measurements of non-convicted persons which is to the following effect:

"4. Taking of measurements, etc., of non¬convicted persons.- Any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurements to be taken in the prescribed manner."

Section 5 deals with the power of Magistrate to order a person to be measured or photographed which is as follows:

"5. Power of Magistrate to order a person to be measured or photographed.- If a Magistrate is satisfied that, for the purposes of any investigation or proceeding under the Code of Criminal Procedure, 1898, it is expedient to direct any person to allow his measurements or photograph to be taken, he may make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer: Provided that no order shall be made directing any person to be photographed except by a Magistrate of the First Class:

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding."

8. The scheme of the Act indicates that Section 3, Section 4 and Section 5 are separate and independent provisions pertaining to taking of measurements. Measurement has been defined under Section 2(a) to include finger impression and footprint impression. In the present case, it is the Police Officer, who have taken fingerprints of the appellant after he was arrested which is referable to Section 4 of the Act.

9. The High Court in paras 22 and 23 of the judgment has dealt with the chance print. In para 22, High Court has observed that the specimen chance print of Sonvir alias Somvir was not taken in the presence of a Magistrate. In para 23 of the judgment reasons have been given for discarding the evidence of palm impression of appellant. Following three reasons are decipherable from the judgment:

i. The Full Bench judgment of the Delhi High Court in *Sapan Haldar & Another vs. State*[1] lays down that only when by way of rules or executive instruction the manner is prescribed to take the measurements then alone an IO under Section 4 of the 1920 Act can obtain the measurements.

ii. It would be eminently desirable as per the decision in *Mohd. Aman and Anr. vs. State of Rajasthan*[2] to follow the procedure ordained under Section 5 of 1920 Act.

iii. No rules having been framed in Delhi and procedure as prescribed under Section 5 of the 1920 Act having not been followed we would discard the evidence of the palm impression of Sonvir alias Somvir.

10. Now, we proceed to examine the above reasons.

11. The Full Bench Judgment of the Delhi High Court in Sapan Haldar and Another (supra) has been heavily relied by the High Court. The above full Bench was constituted on the subject of admissibility of samples, hand writing or signatures obtained from a person accused of having committed an offence during investigation of a crime by the IO.

12. In para 1 of the judgment while noticing the subject matter of reference, the Full Bench has also noticed an earlier Full Bench judgment in Bhupinder Singh vs. State, decided on 30.09.2011.

13. Before we proceed further, it is necessary to note the Full Bench judgment of the Delhi High Court. In Bhupinder Singh vs. State,(Crl.A.No.1005/2008, decided on 30.09.2011) para 1 of the judgment notices the question which has been referred for adjudication by a larger bench. Para 1 of the judgment of Bhupinder Singh (supra) is as follows:

> "1. Expressing doubt with regard to the correctness of the decisions in Harpal Singh v. State (Criminal Appeal No. 362/2008 decided on 25th May, 2010) and Satyawan v. State (Criminal Appeal No. 34/2001 decided on 9th July, 2009) wherein the two Division Benches had ignored the part of the report of the handwriting expert on the ground that the investigating officer had taken specimen handwriting in violation of the provisions of the Identification of Prisoners Act, 1920(for brevity 'the 1920 Act'), the Division Bench that was hearing the Criminal Appeals No. 1005/2008[Bhupender Singh v. The State (Govt. Of NCT of Delhi)] and No. 408/2007 [Drojan Singh v. The State (Govt. Of NCT of Delhi)], referred the following question to be adjudicated by a larger Bench:
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> "Whether the sample finger prints given by the accused during investigation under Section 4 of the Identification of Prisoners Act, 1920 without prior permission of the Magistrate under Section 5 of the Act will be admissible or not?"
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> Under these circumstances, the matter has been placed before us."

14. Full Bench in Bhupinder Singh's case after noticing Sections 3, 4 and 5 of the 1920 Act and referring to the judgments of this Court in *Shankaria vs. State of Rajasthan*[3]*; Mohd. Aman and Another vs. State of Rajasthan(Supra), and State of Madhya Pradesh vs. Devendra*[4] as well as *State of Uttar Pradesh vs. Ram Babu Misra*[5], approved the view of learned Single Judge in *Sunil Kumar @ Sonu vs. State of NCT of Delhi*[6] case. In para 22 of the judgment Full Bench held:

> "22. Thus understood, in our considered opinion, the view expressed in the decisions in Harpal Singh (supra) and Satyawan (supra) is not the correct view. Therefore, the decisions rendered therein are hereby overruled. The view expressed in the case of Sunil Kumar (supra) by the learned Single Judge lays down the law in correct perspective."

15. Sunil Kumar's case which was approved by the Full Bench has been noticed in para 10, which is to the following effect:

> "10. It is worth noting that a Single Judge of this Court in Sunil Kumar @ Sonu Vs State of NCT of Delhi, Crl.A. No. 446 of 2005 decided on 25.3.2010, without taking note of the Division Bench decisions, has held thus:

"26. It is true that the specimen finger print impressions of the appellants were taken by the IO directly and not through the Magistrate as provided in Section 5 of Identification of Prisoners Act. But, that, to my mind was not necessary because Section 4 of Identification Prisoners Act specifically provides that any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards shall, if so required by a police officer, allow his measurement to be taken in the prescribed manner. In view of the independent powers conferred upon a police officer under Section 4 of the Act, it was not obligatory for him to approach the Magistrate under Section 5 of the Act. He would have approached the Magistrate, had the appellants refused to give Specimen Finger Print Impressions to him. Therefore, no illegality attaches to the specimen finger print impressions taken by the Investigating Officer. The court needs to appreciate that the very nature and characteristic of material such as finger prints renders it intrinsically and inherently impossible for anyone to fabricate them. If there is an attempt to fabricate finger prints, that can certainly be exposed by the accused by offering to allow his finger prints to be taken so that the same could be compared through the process of the court. Crl.A. No.1005/2008 Page 7 of 15 None of the appellants has come forward to the court with a request to take his finger print impressions in the court and get them compared with the chance finger prints lifted by PW-1 from Car No. DL 2C A 4116 on 21st December, 2000."

16. It is thus clear that issue which was considered by Full Bench of the Delhi High Court in Bhupinder Singh case is the same issue which is involved in the present case. But the High Court in the impugned judgment without discussing and following the Full Bench judgment of Bhupinder Singh's case has relied on Sapan Haldar (supra).

17. Now reverting to Sapan Haldar case as noticed above, the issue was with regard to admissibility of sample handwriting or signatures obtained from a person accused of having committed an offence. The Full Bench in Sapan Haldar case noticed para 18 of the Bhupinder Singh case and in that reference proceeded to examine provisions of Sections 4 and 5 of the 1920 Act.

18. In para 22 of Sapan Haldar case, reliance was placed on judgment of this Court in *Mahmood vs. State of U.P*[7]*.:*

"22. What happens if there is no manner prescribed for an investigating officer to take the measurements of a person accused of having committed an offence? In the decision reported as *Mahmood vs State of Uttar Pradesh*, specimen finger print impressions taken by the investigating officer under Section 4 of The Identification of Prisoners Act, 1920, in the absence of a manner prescribed for taking the finger print impressions, was held to be a case of evidence not being admissible with respect to the finger prints obtained and the opinion of the expert thereon. The Supreme Court held that in said situation Section 5 of The Identification of Prisoners Act, 1920 ought to have been followed."

19. Para Nos. 26, 28 and 32 of the judgment relevant which are extracted as below:

> "26. In the decision reported Thavaraj Pandian & Ors. vs. State, the Division Bench of the Madras High Court noted that no Rules were framed in the State of Tamil Nadu with respect to the manner in which an investigating officer could obtain the finger prints of a person accused of an offence as contemplated by Section 4 of The Identification of Prisoners Act, 1920 but noted that there were executive instructions with respect to the manner in which finger print impressions could be taken by the investigating officer and therefore opined that in said circumstance evidence relating to finger print impressions obtained by the investigating officer would be admissible in evidence; but on facts noted that the said instructions were not followed and therefore held the evidence to be inadmissible.
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> 28. There is yet another argument which needs to be considered with respect to Section 4 of The Identification of Prisoners Act, 1920. The Section empowers a police officer to take measurements of a person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards. Ex-facie, the Section would have no application where the person is suspected of having committed an offence which is punishable with death or imprisonment for life, as was held by a Division Bench of the Bombay High Court in the decision reported as ILR 1983 Bom. 1508 Nizammuddin Usman vs. State of Maharashtra.
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> 32. Though not falling for consideration in this reference, with respectto finger prints, which are included in 'measurements', the weight of the authorities is that if by way of Rules or Executive instructions the manner is prescribed to take the measurements, alone then can an Investigating Officer, under Section 4 obtain the measurements but strictly as per manner prescribed; but it would be eminently desirable, as per the decision in Mohd. Aman's case (supra) to follow the procedure ordained under Section 5 of The Identification of Prisoners Act, 1920. Relevant would it be to further note that in relation to offences punishable with death or imprisonment for life, Section 4 of The Identification of Prisoners Act, 1920 would not be applicable because the said provision specifies a prerequisite that the person concerned is accused of having committed an offence which is punishable with a sentence to undergo rigorous imprisonment for a term of one year or upwards i.e. the sentence must relate to imprisonment for a term and would thus exclude such offences where either capital punishment or imprisonment for life is the sentence contemplated."

20. It is relevant to note that in para 32 Full Bench in Sapan Haldar has itself noticed that issue regarding fingerprint does not fall for the consideration in the reference. However, the Full Bench proceeded to discuss the law on fingerprints when the issue did not directly fall for consideration in the reference. We fail to see the necessity to lay down any law with regard to Sections 4 and 5 in Sapan Haldar's case when reference was with regard to

admissibility of sample handwriting obtained from a person accused of having committed an offence during investigation of crime.

21. We, however, in spite of the above proceed to examine the observations made by Full Bench in Sapan Haldar (supra) in context of Section 4. Judgment of this Court in Mahmood vs. State of U.P. (supra) was relied. Full Bench in Sapan Haldar read the judgment of this Court in Mahmood vs. State of U.P. as laying down that "in the absence of a manner prescribed for taking the fingerprints impressions was held to be a case of evidence not being admissible with respect to fingerprints obtained and the opinion of expert thereon". The perusal of the judgment of this Court in Mahmood case (supra) indicates that there was complaint by the accused that his fingerprints were forcibly taken by the Police on some round object which has been noticed in para 10 of the judgment. This Court noticed that specimen finger prints of the appellant were not taken before or under the order of Magistrate which was held suspicious feature on the conduct of the investigation. It was further held that even if it is assumed that only a gandasa bore fingerprints of the appellant then also it would not be inexorably and unmistakenly lead to the conclusion that the appellant and none-else was the murderer. Following was held in para Nos. 16, 18 and 19:

> "16. Furthermore, the specimen fingerprints of the appellant were not taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. This is another suspicious feature of the conduct of investigation. It has not been explained why this Magistrate was kept out of the picture.
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> 18. Secondly, even if it is assumed that the handle of this gandasa bore the fingerprints of the appellant, then also it would not inexorably and unmistakably lead to the conclusion that the appellant, and none else was the murderer of Dwarka, unless it was firmly proved further that the fatal injury to the deceased was caused with this weapon. Definite proof of this link was lacking in this case. The missing link could be best supplied by showing that there was blood on this gandasa, and that blood was of human origin. But this was not done.
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> 19. Lastly, it may be observed that Inspector Daryao Singh, PW 15, has not given any reasons in support of his opinion. Nor has it been shown that he has acquired special skill, knowledge and experience in the science of identification of fingerprints. It would be highly unsafe to convict one on a capital charge without any independent corroboration, solely on the bald and dogmatic opinion of such a person, even if such opinion is assumed to be admissible under Section 45 Evidence Act."

22. In the above background this Court held that the solitary piece of circumstantial evidence on which prosecution have staked their claim is too shaky, suspicious and fragile to furnish a sound foundation for conviction, as held in para 20:

> "20. In the light of the above discussion, we are of the view that the solitary piece of circumstantial evidence on which the prosecution have staked their case, is too shaky, suspicious and fragile to furnish a sound foundation for conviction."

23. The above judgment cannot be read as a precedent laying down that in the absence of a manner prescribed for taking of fingers impressions, the evidence is not admissible. We are of the view that observations made by Full Bench in Sapan Haldar case in para 22 are not supportable from the judgment of this Court in Mahmood vs. State of U.P.

24. Now, we come to para 26 of the judgment of Sapan Haldar case where Delhi High Court notices the Madras High Court judgment in Thavaraj Pandian & Ors vs. State, 2003 Cri. L.J.2642 where Madras High court has held that no rule has been framed in the State of Tamil Nadu with respect to manner in which an IO can obtain the fingerprints of a person accused of an offence, but noted that there were executive instructions with respect to manner in which fingerprints impression could be taken. The Madras High Court has not relied on the fingerprints impressions having noted that executive instructions for taking of fingerprints were not followed. Thus, judgment of the Madras High Court was on its own facts.

25. Now, we come to another reason. In para 28 of the judgment of Sapan Haldar (supra), Full Bench of the Delhi High Court has held that Section 4 of the 1920 Act is not applicable where a person is suspected of having committed an offence which is punishable with death or imprisonment of life. Section 4 of the Act provides with regard to a person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards. What Delhi High Court seems to suggest is that Section 4 is not applicable when a person is suspected of committing an offence which is punishable with death or imprisonment of life.

26. The purpose and object of empowering Police Officer to take fingerprints in an offence punishable with rigorous imprisonment for a term of one year or upwards is; for offences of trivial nature where rigorous imprisonment is less than one year Police officer is not empowered to take fingerprints. The use of words "rigorous imprisonment for a term of one year or upwards" does not negate the punishment of life imprisonment or death.

27. The object of the Section was not to empower the Police Officer to take fingerprints in trivial offences where imprisonment is less than one year but the provision cannot be read to mean that Police Officer does not have such power if imprisonment is for life or capital punishment. The reading of Section 4 in the manner suggested by Full Bench will negate the very purpose of empowerment of Police Officer to take the fingerprints.

28. Now, we come to para 32 of the judgment where Delhi High Court has held that the weight of the authorities is that if by way of Rules or executive instructions, the manner is prescribed to take the measurements, alone then can an IO under Section 4 obtain the measurements, but strictly, as per the manner prescribed. In para 32 of the Sapan Halder (supra), the judgment of the Mohd. Aman's case has also been referred to:

> "32. Though not falling for consideration in this reference, with respect to finger prints, which are included in ^measurements", the weight of the authorities is that if by way of Rules or Executive instructions the manner is prescribed to take the

measurements, alone then can an Investigating Officer, under Section 4 obtain the measurements but strictly as per manner prescribed; but it would be eminently desirable, as per the decision in Mohd. Aman"s case (supra) to follow the procedure ordained under Section 5 of The Identification of Prisoners Act, 1920."

29. It is necessary to refer to the judgment of Mohd. Aman (supra) relied by the Delhi High Court. In the Mohd. Aman case, the fingerprints were taken on several occasions, in para 7 the facts have been noticed which are to the following effect:

"7. As noticed earlier the only incriminating circumstance on the basis of which the High Court upheld the conviction of Mohd. Aman is that his fingerprints were found on a brass jug in the house of the deceased. From the evidence adduced in proof of the above circumstance it appears that the brass jug, together with other articles, was seized, packeted and sealed on 14-4-1983 and forwarded to the Fingerprint Bureau after five days - on 19-4-1983 to be precise through Constable Mohd. Sadique (PW 4) along with a letter written by the investigating officer (copy of which was marked as Ext. P-59). On the following day, that is, 20-4-1983 the Bureau sent the articles back after taking photographs of the chance prints found on the jug and three other articles (out of the sixteen sent) with a corresponding letter (Ext. P-60). After Mohd. Aman was arrested on 20-4-1983 his specimen fingerprints were taken by H.C. Ramji Ram (PW 24) and forwarded to the Bureau on 24-5-1983. As the prints were not clear, the same were returned by the Bureau asking for better prints. Specimen fingerprints were thereafter again taken on 20-6-1983 and sent to the Bureau. These prints were also sent back and for the third time prints of Mohd. Aman were taken and sent to the Bureau on 30-6-1983. Thereafter the Bureau gave its report (Ext. 115) with the opinion that the chance fingerprints found on the brass jug were similar to and identical with his specimen fingerprints."

30. This Court observed that the prosecution has failed to establish that the seized articles were not or could not be tempered with before it reached the Bureau for examination. Further following was stated in para 8:

"8 Apart from the above missing link and the suspicious circumstances surrounding the same, there is another circumstance which also casts a serious mistrust as to genuineness of the evidence. Even though the specimen fingerprints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take fingerprints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate "

(underlined by us)

31. The above observation although clearly mentions that under Section 4 Police officer is competent to take fingerprints of the accused but to dispel as to its bona fide or to eliminate the fabrication of evidence it was eminently desirable that they were taken before or under the order of magistrate.

32. The observation cannot be read to mean that this Court held that under Section 4 Police Officer are not entitled to take fingerprints until the order is taken from the Magistrate. The observations were made that it is desirable to take the fingerprints before or under the order of the Magistrate to dispel any suspicion. Especially, the suspicions which were caused in the above case which is clear from the facts noticed in para Nos. 7 and 8. Observations of this Court in Mohd. Aman's case was in the facts of that case and cannot be read to mean that Police Officer cannot obtain fingerprints without obtaining an order from Magistrate under Section 5.

33. In this context, it is useful to note another judgment of this Court in Prakash vs. State of Karnataka, (2014) 12 SCC 133 where two-Judge Bench of this Court relying on Mohd. Aman (supra) has given following observations in para 28:

> "28. Assuming Prakash's fingerprint was in fact obtained by D'Souza, it was clearly not given voluntarily, but perhaps unwittingly and in what seems to be a deceitful manner. To avoid any suspicion regarding the genuineness of the fingerprint so taken or resort to any subterfuge, the appropriate course of action for the investigating officer was to approach the Magistrate for necessary orders in accordance with Section 5 of the Identification of Prisoners Act, 1920. In Mohd. Aman v. State of Rajasthan this Court referred to the possibility of the police fabricating evidence and to avoid an allegation of such a nature, it would be eminently desirable that fingerprints were taken under the orders of a Magistrate. We may add that this would equally apply to the creating evidence against a suspect. This is what this Court had to say: (SCC p. 49, para 8)
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> "8. ... Even though the specimen fingerprints of Mohd. Aman had to be taken on a number of occasions at the behest of the Bureau, they were never taken before or under the order of a Magistrate in accordance with Section 5 of the Identification of Prisoners Act. It is true that under Section 4 thereof police is competent to take fingerprints of the accused but to dispel any suspicion as to its bona fides or to eliminate the possibility of fabrication of evidence it was eminently desirable that they were taken before or under the order of a Magistrate.""

34. This Court in above case repeated and reiterated the observations of the Mohd. Aman case, which we have already discussed above.

35. It is necessary to refer to a Three Judge Bench judgment of this Court in Shankaria vs. State of Rajasthan (supra). This Court in the above case had occasion to notice Section 4 and Section 5 of the 1920 Act where submission was raised before this Court that specimen of thumb impression of the appellant having not been obtained before the magistrate they

cannot be relied. The argument was repelled by this court and following was laid down in paras 83 and 84:

> "83. Mr Gambhir next contends that in view of Section 5 of the Identification of Prisoners Act, it was incumbent on the police to obtain the specimen thumb-impressions of the appellant before a Magistrate, and since this was not done, the opinion rendered by the Finger Print Expert, Mr. Tankha, by using those illegally obtained specimen finger-impressions, must be ruled out of evidence.
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> 84. The contention appears to be misconceived because in the State of Rajasthan, the Police were competent under Section 4 of the Identification of Prisoners Act, to take the specimen fingerprints of the accused, and this they did, in the instant case, before the Superintendent of Police, Shri K.P. Srivastava. It was not necessary for them to obtain an order from the Magistrate for obtaining such specimen fingerprints."

36. The three Judge Bench clearly held that it was not necessary for the Police officer to obtain an order from a Magistrate for obtaining specimen of fingerprints. Law laid down by three-Judge Bench judgment is thus clearly applicable in the present case.

37. One of the reasons given by Full Bench of Delhi High Court in Sapan Haldar case was that there being no rules or executive instructions prescribing a manner of taking of fingerprints, Police Officer cannot exercise the power under Section 4. We need to dwell this aspect little more. The word prescribed has been defined under Section 2(c) as "prescribed means prescribed by rules made under this Act". Section 8 empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Act. Section 8 is as follows:

> "8. Power to make rules .-(1) The State Government may, 1[by notification in the Official Gazette,] make rules for the purpose of carrying into effect the provisions of this Act.-(1) The State Government may, 1[by notification in the Official Gazette,] make rules for the purpose of carrying into effect the provisions of this Act."
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> (2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for-
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> (a) restrictions on the taking of photographs of persons under section 5;
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> (b) the places at which measurements and photographs may be taken;
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> (c) the nature of the measurements that may be taken;
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> (d) the method in which any class or classes of measurements shall be taken;
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> (e) the dress to be worn by a person when being photographed under section 3; and

(f) the preservation, safe custody, destruction and disposal of records of measurements and photographs.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before State Legislature.]"

38. Whether the power of the Police Officer under Section 4 cannot be exercised till the State make rules under Section 8? The appellant supporting the judgment of the Delhi High Court contends that since Section 4 uses the words "allow his measurement to be taken in the prescribed manner", unless there is a prescribed manner by the rules fingerprints cannot be taken. The power of the State given under Section 8 to frame rules is an enabling power. The word used under Section 8 is, the State Government "may". Can it mean that till the rules are framed by the State, power under Sections 3 and 4 cannot be exercised? The power given to the Police Officer to ask a person arrested to give his measurements is a substantive power. This power is hedged by the condition that such measurement has "to be taken in the prescribed manner" if there is any prescribed manner that cannot be breached by such Police Officer. Taking of the measurements in the prescribed manner is a procedural part of the Section which does not affect the substantive power of the Police Officer to ask an accused who is under arrest to give his measurement.

39. In event, it is held that unless the rules are framed under Section 8 power under Section 4 cannot be exercised that will not be in consonance with the very purpose and object for which Section 4 has been enacted. The submission of the appellant further is that when there is no rule framed providing prescribed manner for taking fingerprints, resort to Section 5 has to be taken by IO. Section 5 is a separate power given to Magistrate. The power of the Magistrate is an additional and separate power to secure ends of justice for purpose of investigation and proceedings under Code of Criminal Procedure. It may be exercised even in a case where after arrest Police Officer has not taken fingerprints of an accused. But, it cannot be held that power under Section 4 can be exercised by the Police Officer only after obtaining an order under Section 5.

40. One more aspect needs to be looked into. Section 3 also provides for taking of measurements of convicted person. Section 3 also uses the phrase "allow the measurement and photographed be taken by Police Officer in the prescribed manner". Now, if the phrase "prescribed manner" has to be read as existence of a rule providing for a prescribed manner of taking of evidence, in absence of rule no fingerprints can be taken under Section 3 also of a convicted person, it is relevant to note that Section 5 can also not be resorted in Section 3. Since Section 5 can only be resorted for the purposes of any investigation or proceeding under the Code of Criminal Procedure 1898. After a conviction of an accused Section 5 is inapplicable then if the interpretation placed by appellant is accepted, even for convicted persons, it would not be permissible to ask measurement unless the rules are framed.

41. In this context, we may like to refer the judgment of Constitution Bench of this court in *V.T. Khanzode and Others vs. Reserve Bank of India and Another*[8]. In the above case, this Court had occasion to consider the Reserve Bank of India Act, 1934, Section 58 sub

section (2). Section 58 was power of the Central Board for making regulations. Section 58(1) and (2) has been referred in para 13 of the judgment which is to the following effect:
"13. Turning to the first question, Section 58(1) of the Reserve Bank of India Act, 1934 provides that:

> "The Central Board may, with the previous sanction of the Central Government, make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act."
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> Sub-section (2) of Section 58 provides that in particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the matters mentioned in the various clauses of that sub-section. Clause (j) refers to "the constitution and management of staff and superannuation funds for the officers and servants of the Bank", while clause (r) refers to the subject: "generally, for the efficient conduct of the business of the Bank"

42. This Court on Section 58(1) had observed that the power given to Central Board was an enabling power which is clear from the use of word "may". Following was observed in para 18 marked portion:

"18 On that argument, it is material to note that Section 58(1) is in the nature of an enabling provision under which the Central Board "may" make regulations in order to provide for all matters for which it is necessary or convenient to make provision for the purpose of giving effect to the provisions of the Act. This provision does not justify the argument that staff regulations must be framed under it or not at all. The substance of the matter is that the Central Board has the power to frame regulations relating to the conditions of service of the Bank's staff. If it has that power, it may exercise it either in accordance with Section 58(1) or by acting appropriately in the exercise of its general power of administration and super-intendence."

43. The Constitution Bench also held that in absence of regulation under 58(1), the Central Board could have issued administrative circulars and there was no prohibition in regulating service conditions by administrative circulars.

44. The above view of ours find support from the judgment of this Court reported in *Surinder Singh Vs. Central Government & Ors*[9]. In the above case, this Court had occasion to consider the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954. Section 8 of the Act lays down that a displaced person shall be paid compensation as determined under Section 7 "subject to the rules that may be made under this Act". Section 40 confers power on the Central Government to frame rules to carry out the purpose of the Act. Clause (j) of sub-section (2) of Section 40 provides for framing of rules laying down procedure for transfer of property out of the compensation pool and the manner of realisation of the sale proceeds. The Central Government had not framed rules regulating the disposal by sale or otherwise of urban agricultural land forming part of the compensation pool.

45. The authority constituted under the Act disposed of urban agricultural property by auction sale. The High Court had held that disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Sections 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale.

46. This Court reversing the above opinion of the High Court held that where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In Para 6, following has been laid down:-

> 6 In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute "

47. This Court further held that framing of the rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act. Following was laid down in Paragraph 7:-

> "7 Framing of rules regulating the mode or manner of disposal of urban agricultural property by sale to a displaced person is not a condition precedent for the exercise of power by the authorities concerned under Sections 8, 16 and 20 of the Act. If the legislative intent was that until and unless rules were framed power conferred on the authority under Sections 8, 16 and 20 could not be exercised, that intent could have been made clear by using the expression "except in accordance with the rules framed" a displaced person shall not be paid compensation by sale of pool property. In the absence of any such provision the framing of rules, could not be a condition precedent for the exercise of power."

48. What has been laid down above is fully attracted in the facts of the present case. Non-framing of any rules under Section 8 by the State Government does not prohibit the exercise of powers given under Sections 3 and 4 of the Act. Exercise of power under Sections 3 and 4 is hedged by conditions as prescribed but in a case where no rules have been framed, the

authorities as empowered under Sections 3 and 4 are not denuded of their powers to act under Sections 3 and 4. In a case, the interpretation put by the learned counsel for the appellant that in absence of rules framed under Section 8, no power can be exercised under Sections 3 and 4 is accepted, the provisions of Sections 3 and 4 shall become dead letter, which has never been the intention of the legislature in enacting the 1920 Act.

49. It is relevant to note that the Delhi High Court in para 23 of the impugned judgment has discarded the chance evidence of palm impression by observing "no rules having been framed in Delhi and procedure as prescribed in Section 5 of Identification of Prisoners and having not been followed, we would thus discard the evidences of palm impressions". Whether there were any executive instructions regarding taking of fingerprints in State of Delhi or not is an issue on which there is no clear materials. It is not the case of the appellant before any Court that fingerprints were taken in disregard of any executive instructions applicable in the State of Delhi.

50. Learned counsel for the respondent referring to the evidence of PW32 where he made a statement regarding taking of fingerprints of the accused, contended that there was no cross-examination by the defence on this aspect. It is useful to extract following portion of the written submissions of the respondent:

> "In this regard, the deposition of PW 32 at pg 173(bottom) is relevant, "During police custody remand of accused, I took finger print of accused Rajesh@Sultan and sonvir @ Somvir. The same as well as the chance print picked up by SI Naresh Kumar were sent to the Fingerprint Bureau, Malviyanagar, for their comparison. My application in this regard is Ex PW32/N." There is no cross examination by the defence on this aspect."

51. In view of the foregoing discussion we are of the opinion that view of the Delhi High Court that evidence of fingerprints of the accused has to be discarded cannot be supported for the reasons given in the impugned judgment of the Delhi High Court.

52. Even if, we accept that fingerprints of appellant's, chance print Mark Q5 (taken from iron safe) was identical to the specimen of left palm impression of Sonvir, it does not complete the chain of circumstances unerringly pointing out fingers to the appellant, that it was the appellant who committed the murder. Law of conviction based on circumstantial evidences is well settled. It is sufficient to refer to the judgment of this Court in *Ramesh and Others vs. State of Rajasthan*[10], where in para 17 following has been held:

> "17. Before we proceed with the matter, it has to be borne in mind that this case depends upon circumstantial evidence and, as such, as per the settled law, every circumstance would have to be proved beyond reasonable doubt and further the chain of circumstances should be so complete and perfect that the only inference of the guilt of the accused should emanate there from. At the same time, there should be no possibility whatsoever of the defence version being true."

53. Thus, even if, above evidence is not discardable the entire chain of circumstances is not complete to unmistakeably point out the guilt to the appellant.

54. In result, the appeal is allowed. The appellant stands acquitted of the charges under Sections 302, 392 read with Section 34 of the IPC. The appellant is directed to be released forthwith, if not required in any other case.

JUDGMENT

Indu Malhotra,J.,

55. The present Criminal Appeal has been filed by the Appellant-Accused No. 2 against the judgment and order dated 10th December 2014 passed by the Delhi High Court in Criminal Appeal No.1300 of 2014. The appellant, along with Accused Nos. 1 and 3, were convicted for offences punishable under Sections 302, 392 read with Section 34 of the IPC by the Sessions Court. The High Court affirmed the sentence awarded to Accused Nos. 1 and 2. The present appeal has been preferred by the Appellant-Accused No. 2. Accused No. 1 has apparently not challenged the judgment of the High Court, and is serving the sentence awarded.

1.1The prosecution case is that on 20th October 2009, the PCR received information at 11:45 a.m. from some secret informer stating that House No. C- 190, Kinner Wali Building, Shaheen Bagh, New Delhi, was locked and there was something wrong inside. The police opened the main gate with the help of a key maker. On entering the main gate, dried blood was found on the floor, and on the right side a Maruti car bearing No. 800 DL-6CA-3414 was found parked with all four tyres deflated. On the left-hand side, inside the bathroom, the dead body of Meena Kinner, aged 30 years, was found with injury marks on the neck and right arm. On the first floor, the dead body of one Vimlesh Kinner, aged 45 years, was found on the double bed. The body of Vimlesh had injury marks on the neck, chest, arm, toe, index finger etc. Articles were found scattered in the house. Both the deceased were persons of the third gender.

1.2 Post-mortem was conducted on the body of Vimlesh by Dr. Sunay M (PW-2) who opined that the cause of death was shock due to haemmorhage caused by injuries from a sharp weapon. Dr. Susheel Sharma (PW-7) conducted the post¬mortem on the body of deceased Meena. The injuries were found sufficient to cause death in the ordinary course of nature. The injuries were caused by a sharp pointed heavy weapon.

1.3 The Investigating Officer ("I.O.") - Inspector Amrit Raj (PW-32A), got the FIR registered on the statement of Khalil Ahmed (Accused No. 3) who introduced himself as being in the relationship akin to that of a husband and wife with the deceased Vimlesh. Sub-Inspector Naresh Kumar Sharma (PW-8), In-charge of the Fingerprint Bureau, Crime Branch, Kamla Market visited the spot, and picked up six chance prints.

1.4 On 3rd November 2009, at about 8:30 pm on the basis of secret information, the police apprehended Sultan @ Rajesh (Accused No. 1) who was the driver of the deceased Vimlesh. Sultan @ Rajesh (Accused No. 1) allegedly disclosed that Sonvir @ Somvir (Appellant-Accused No. 2) a taxi-driver, Khalil Ahmed (Accused No. 3), and "N" (Juvenile) were also involved in the conspiracy with him. As per the prosecution case, Sultan @ Rajesh (Accused No. 1) at the time of being apprehended, was allegedly found to be carrying a black bag on his shoulder containing 15 items of golden jewellery, 2 pairs of payjeb, 6 silver coins, Rs. 2,00,000/- in cash, one wrist watch of ICICI make, and two photographs of the deceased Vimlesh.

1.5 Later the same day at night, Sultan @ Rajesh (Accused No. 1) led the police to Sonvir @ Somvir (Appellant-Accused No. 2), who was staying in a room in the house of Teja Chaudhary. At the time of arrest, Sonvir @ Somvir (Appellant-Accused No. 2), was allegedly also carrying a black coloured bag containing 15 items of golden jewellery, 2 items of silver, 6 silver coins and Rs. 50,000/- in cash. Sonvir @ Somvir (Appellant-Accused No. 2) led the police to his room, and brought out a blood-stained knife, and a blood-stained shirt, from a bucket.

1.6 It is further alleged that the police apprehended Khalil Ahmed (Accused No. 3) at Hari Nagar who was also allegedly carrying a bag with him. On searching the bag, some golden jewellery, 2 wrist watches, and Rs. 3,00,000/¬in cash were allegedly recovered at about 4.35 a.m. on 4th November 2009.

1.7 Khalil Ahmed (Accused No. 3) then led to the arrest of "N" (Juvenile) on 4th November 2009. "N" (Juvenile) was sleeping on the floor with a bag under his pillow. On searching the bag, some jewellery items, 1 Nokia 6600 mobile phone and Rs. 32,000/- in cash were allegedly recovered.

1.8 On 7th November 2009, Sultan @ Rajesh (Accused No. 1) and Sonvir @ Somvir (Appellant-Accused No. 2) led the police to Village Bhind, District Morena for the recovery of a Maruti van belonging to Vimlesh. The Maruti van with the broken number plate had already been seized by ASI Udai Bhan Singh Parmar (PW-23) on 1st November 2009 from Gate No. 2 of the Punj Llyod Factory at Noorabad. It was handed over to the I.O. - SI Amrit Raj (PW- 32A) on 8th November 2009. The Maruti van along with the articles in it were seized by the I.O. - SI Amrit Raj (PW-32A). A broken number plate was allegedly recovered by the police near Gate No. 2 of the Punj Llyod Factory at Noorabad at the instance of Sultan @ Rajesh (Accused No. 1) and Sonvir @ Somvir (Appellant-Accused No. 2).

1.9 On 12th November 2009, Sultan @ Rajesh (Accused No. 1) led the police to the garage of Quarter No.86, Type-II, Jal Vihar and brought out a polythene bag after digging the earth. The said polythene bag allegedly contained Rs. 40,000/- in cash and 2 golden chains.

1.10 The I.O - SI Amrit Raj (PW-32A), obtained finger impressions of two of the accused viz. Sultan @ Rajesh (Accused No. 1) and Sonvir @ Somvir (Accused No. 2) whilst they were in police custody.

1.11 The finger impressions were taken by the I.O. - SI Amrit Raj (PW-32A), without obtaining the permission of the Magistrate as per Section 5 of the Identification of Prisoners Act, 1920.

1.12 There is no eye witness of the incident. The case is based wholly on circumstantial evidence.
1.13 That since "N" was a juvenile, he was proceeded separately by the Juvenile Justice Board.

1.14 The trial proceeded against the three accused viz. Sultan @ Rajesh (Accused No. 1), Sonvir @ Somvir (Appellant-Accused No. 2), and Khalil Ahmed (Accused No. 3). Khalil Ahmed (Accused No. 3) stated that he was in a relationship akin to that of a husband and wife with the deceased Vimlesh. Sultan @ Rajesh (Accused No. 1) was employed as a driver by Vimlesh; whilst Sonvir @ Somvir (Accused No. 3) was a taxi driver, whose taxi had been engaged by Vimlesh on some occasion, as per Sonvir @ Somvir's statement recorded under Section 313 of the Cr.P.C.

56. The Trial Court vide Judgment and Order dated 3rd June 2014 convicted all the three accused for offences punishable under Sections 302 and 392 r.w. Section 34 of the IPC.

2.1 The Trial Court held that most of the injuries were stab wounds/laceration/incised wounds. Apart from this, it was found that the articles in the house of the deceased were found scattered, which made it clear that the victims were killed because of robbery. The Trial Court notes that none of the accused claimed the jewellery items/cash allegedly recovered from their possession as belonging to the them. The accused submitted that they had been falsely implicated in the case.

The Trial Court records that it is true that no person from the public was joined at the time of recovery. The recoveries were allegedly made only in the presence of police officers i.e. PW-21, PW-25, PW-31, PW-34 and PW-36.

2.2 With respect to the present appellant, it is alleged that a blood-stained shirt, and one blood-stained "churra" were recovered from a plastic bucket lying under a dining table of his room in the house of Teja Chaudhary. As per the Scientific Officer, articles seized from the house of the victim, and the shirts of the accused, had the same blood group "B". It is further alleged that out of the six chance prints marked Q1-Q6, Q5 was identical with the left palm impression of the present appellant.

2.3 The Trial Court holds that the recovery leads to a presumption that the accused along with the other accused had committed the robbery. It is further held that it is not established that which of the accused had caused the fatal blow, using any dangerous

weapon. Similarly, it is not established from the record that the accused persons had hatched any conspiracy to kill the victims. Hence, no offence punishable under Sections 397 or 120-B IPC is made out.

57. That all the three accused preferred appeals before the High Court. The High Court granted benefit of doubt to Khalil Ahmed (Accused No. 3) on the ground that the recovery of jewellery and cash cannot be taken to be incriminating as a stand-alone evidence. That since Khalil Ahmed (Accused No. 3) has stated that he was in the relationship of husband and wife with the deceased Vimlesh, Accused No. 3 could have owned and possessed jewellery and cash.

3.1 The High Court has recorded, in paragraph 16 of the Judgment, that none of the jewellery items were subjected to a Test Identification Parade during the investigation. Even in the dock, no witness identified that the jewellery recovered at the instance of the three accused belonged to the deceased. Further, in paragraph 18 of the Judgment, the High Court holds that the prosecution had not proved that the jewellery recovered from the appellant belonged to the deceased. Hence, the recovery of jewellery articles cannot be held to be connected with the offence.

3.2 In paragraph 19 of the Judgment, the High Court has further held that with respect to the alleged recovery of a knife from Sonvir @ Somvir, on examination by the FSL, no blood grouping could be given. Furthermore, no opinion was sought from the post-mortem doctor whether the injuries to the deceased were possible by the said weapon of offence. In the absence of any witness identifying the weapon of offence used in the commission of crime, or the opinion of the post-mortem doctor that the injury was possible by the said knife, or the FSL report regarding the blood of the deceased being found, the knife could not be said to be connected with the offence, and cannot be used as a piece of incriminating evidence against him.

3.3 The High Court dismissed the appeals filed by Sultan @ Rajesh and Sonvir @ Somvir and affirmed the judgment of the Trial Court on the ground that the prosecution had proved the recovery of blood-stained shirts at their instance, which were found to be blood-stained with the "blood group" of the deceased i.e. "B" group, unaccounted jewellery and cash, recovery of the Maruti van, a piece of broken number plate of the said van.

58. Aggrieved by the judgment of the High Court, Sonvir @ Somvir (Appellant- Accused No. 2) has filed the present SLP, which was re-numbered as Criminal Appeal No. 958 of 2017. Sultan @ Rajesh (Accused No. 1) has apparently not challenged the judgment of the High Court, and is undergoing the sentence awarded.

59. The legal evidence relied by the prosecution against Sonvir @ Somvir (Appellant-Accused No.2) is as follows:

i. recovery of unaccounted jewellery and cash;

i i. recovery of the blood-stained knife;

iii. recovery of blood-stained shirt;

iv. recovery of abandoned Maruti van and broken number plate;

v. report of the Forensic Expert stating that the chance prints lifted from the scene of crime, matched the finger impressions obtained from the Appellant whilst he was in police custody.

60. The legal evidence adduced by the prosecution is dealt with seriatim, to determine whether the prosecution has proved the case for offences punishable under Sections 302, 392 read with Section 34 of the IPC against the present Appellant beyond reasonable doubt.

6.1 Alleged recovery of unaccounted jewellery and cash As per the prosecution case, 15 items of golden jewellery, 2 items of silver, 6 silver coins and Rs. 50,000/- in cash were allegedly recovered from Sonvir @ Somvir (Appellant-Accused No. 2) at the time of his arrest on 3rd November 2009, which was 16-17 days after the date of the occurrence of the offence. The said jewellery and cash belonged to the deceased Vimlesh. Sonvir @ Somvir (Appellant-Accused No. 2) did not claim that the jewellery and cash belonged to him, and failed to give an explanation in his statement recorded under Section 313 of the Cr.P.C., as to how he was in possession of such a large amount of jewellery and cash. Sonvir @ Somvir (Appellant-Accused No. 2) in his statement recorded under Section 313 of the Cr.P.C. stated that the recovery was planted, and that he had been falsely implicated. The prosecution alleged that 16-17 days after the date of occurrence of the offence, when each of the accused was apprehended, each of them was found holding bags of jewellery. This seems improbable and unnatural. In the case of Sonvir @ Somvir (Appellant-Accused No. 2), he was apprehended from his room in the house of one Teja Chaudhary. The brother of deceased - Vimlesh, one Mohd. Ayub (PW-4) has denied the suggestion of the learned APP that he was shown the jewellery recovered from the possession of the accused persons, or that he identified the jewellery articles to be belonging to Vimlesh. The jewellery articles were not identified to be of the deceased. In these circumstances, the alleged recovery of jewellery and cash from Sonvir @ Somvir (Appellant-Accused No. 2) could not be taken as a piece of incriminating evidence.

6.2 Alleged recovery of blood-stained knife As per the prosecution, a blood-stained knife was also recovered from Sonvir @ Somvir (Appellant-Accused No. 2), at the time of his arrest. As per the FSL report (Ex. PW-33/A), while the knife was found to be stained with human blood, no blood grouping could be given. The High Court, in paragraph 19 of its judgment, found that in the absence of any witness identifying the weapon of offence used in the commission of crime, or the opinion of the post-mortem doctors that the injury was possible by the said knife, or the FSL report regarding the blood of the deceased being found on the said knife, the knife cannot be said to be connected with the offence. On the basis of the above finding, the High

Court concluded that the recovery of the knife at the instance of Sonvir @ Somvir (Appellant-Accused No. 2) cannot be used as a piece of incriminating evidence against him.

As a consequence, the weapon of offence allegedly recovered from Sonvir @ Somvir (Appellant-Accused No. 2) and used in the commission of the crime, cannot be taken as a piece of incriminating evidence against him.

6.3 Alleged recovery of blood-stained shirt As per the prosecution, a blood-stained shirt was recovered at the instance of Sonvir @ Somvir (Appellant-Accused No. 2) from his room in the house of Teja Chaudhary, at the time of his arrest. The blood-stained shirt was sent for analysis to the FSL. As per the FSL report (Ex. PW-33/A), the shirt allegedly recovered from Sonvir @ Somvir (Appellant-Accused No. 2) was found to be stained with human blood of "B" group, which was the same "blood group" as that of the deceased. In paragraph 20, the High Court held the recovery of the blood-stained shirt from Sonvir @ Somvir (Appellant-Accused No. 2) to be incriminating against him, since the blood samples taken from the bed-sheet at the scene of crime, were also found to be of the same blood group.

It is relevant to note that as per the FSL report (Ex. PW-33/A), both the blood¬stained shirt allegedly recovered from Sonvir @ Somvir (Appellant-Accused No. 2) and the blood samples taken from the bedsheet at the scene of crime were found to be stained with human blood of "B" group.

The mere matching of the blood-group of the blood samples taken from the bed-sheet at the scene of crime, and the blood-stained shirt recovered from Sonvir @ Somvir (Appellant-Accused No. 2) cannot lead to the conclusion that the appellant had been involved in the commission of the crime.

On this issue, reliance can be placed on two decisions of this Court in Prakash v. State of Karnataka [(2014) 12 SCC 133; paragraphs 41 and 45] and Debapriya Pal v. State of West Bengal [(2017) 11 SCC 31; paragraph 8] wherein this Court while deciding cases based on circumstantial evidence had held that mere matching of the blood group cannot lead to the conclusion of the culpability of the accused, in the absence of a detailed serological comparison, since millions of people would have the same blood group. In the present case, the prosecution has not proved that the room from where the blood-stained knife and blood-stained shirt were allegedly recovered, was in the exclusive possession of the appellant. The prosecution case is that the said room was in the house owned by one Teja Chaudhary. The prosection did not examine the said Teja Chaudhary to prove that the said room was rented to Sonvir @ Somvir and/or was in the exclusive custody of the appellant.

Therefore, the recovery of the blood-stained shirt from Sonvir @ Somvir (Appellant-Accused No. 2) cannot be used as an incriminating piece of evidence.

6.4 Alleged recovery of the Maruti van and the broken number plate The prosecution alleged that both Sultan @ Rajesh (Accused No. 1) and Sonvir @ Somvir (Appellant-Accused No. 2) disclosed that they had abandoned the Maruti van belonging to Vimlesh 20 kilometers from Gwalior. They were taken to Morena by the I.O. - SI Amrit Raj (PW-32A), on 8th November 2009. The Maruti van with a broken number plate had, however, already been seized by ASI Udai Bhan Singh Parmar (PW-23) as unclaimed on 1st November 2009.

Further, both these accused allegedly led the police party near Gate No. 2 of the Punj Lloyd Factory at Noorabad from where the Maruti van had already been recovered, and got recovered the broken number plate bearing number "86". The recovery of the Maruti Van and the broken number plate was held to be a piece of incriminating evidence against Sultan @ Rajesh (Accused No. 1) and Sonvir @ Somvir (Appellant-Accused No. 2) by the Trial Court. SI Abhisek Singh (PW-30) had stated in his cross-examination that no public person/independent witness was present at the time of the alleged recovery. It is important to note that while ASI Udai Bhan Singh Parmar (PW-23) stated that the broken number plate was allegedly recovered from the garbage dump, SI Abhishek Singh (PW-30) and Inspector Amrit Raj (PW-32A) stated that it was allegedly recovered from the bushes. The absence of any independent witness of the alleged recoveries, and the discrepancy in the statements of the police officers, makes the
prosecution case doubtful.

6.5 Forensic report regarding matching finger impressions The prosecution relied upon the report tendered by the Senior Finger Print Expert of the Fingerprint Bureau, RN Rawat (PW-35), to state that the finger impressions obtained from Sonvir @ Somvir matched with the chance prints obtained from the scene of crime.

The Trial Court and the High Court considered the six chance prints lifted from the first floor of the house by SI Naresh Kumar Sharma (PW-8), In¬charge of the Finger Prints Bureau, Crime Branch. Chance prints Q1 to Q3 were lifted from the iron box on the first floor, Q4 from the showcase glass, and Q5 and Q6 from the iron safe. The Senior Finger Prints Expert of the Fingerprint Bureau, RN Rawat (PW-35), vide his reports (Ex. PW-35/A and Ex. PW-35/B), opined that the chance print marked Q1 was identical to the specimen right palm impression of Sultan @ Rajesh (Accused No. 1), while chance print marked Q5 was identical to the specimen left palm impression of Sonvir @ Somvir (Appellant-Accused No. 2).

The specimen chance prints of both these accused viz. Rajesh @ Sultan (Accused No. 1) and Sonvir @ Somvir (Appellant-Accused No. 2) were taken by the I.O. - SI Amrit Raj (PW-32A), without obtaining any order of a Magistrate whilst the accused were in police custody.

This leads to the issue as to whether the report of the Forensic Expert is admissible in evidence, in light of the provisions of the Identification of Prisoners Act, 1920 ("the

Act") since no rules have been framed prescribed by the Government of NCT of Delhi. This issue is being dealt with in the separate Judgment by Justice Ashok Bhushan.

61. In the aforesaid facts and circumstances, the prosecution has failed to make out the complete chain of circumstances to establish the guilt of the appellant beyond reasonable doubt. As a result, the present appeal is allowed, and the judgment and order passed by the High Court dated 10.12.2014 in Criminal Appeal no. 1300 of 2014 is set aside. The appellant is acquitted of the charges under Sections 302, 392 read with Section 34 of the I.P.C. 1860.

Judgment Referred.

[1]*191 (2012) DLT 0225*
[2]*(1997) 10 SCC 0044*
[3]*(1978) 3 SCC 0435*
[4]*(2009) 14 SCC 0080*
[5]*(1980) 2 SCC 0343*
[6]*Crl.A.No.446 of 2005*
[7]*AIR 1976 SC 0069*
[8]*(1982) 2 SCC 0007*
[9]*(1986) 4 SCC 0667*
[10]*(2011) 3 SCC 0685*