A MANISH DIXIT AND ORS.

v.

STATE OF RAJASTHAN

OCTOBER 18, 2000

B [K.T. THOMAS AND S.N. VARIAVA, JJ.]

Evidence Act, 1872:

C *Section 34—"Books of accounts"—Meaning of—Hotels register—Entries in—Evidentiary value of—Held: Unless a hotel register contains any statement of account it cannot be treated as a book of accounts—Even if it were so an entry therein cannot be the basis to charge a person with liability.*

D *Section 137—Re-examination—By Public Prosecutor—Duties of—Statement of witness—Contradictions or inconsistencies in—Clarification of—Held: Public Prosecutor should put such questions in re-examination as to enable a witness to explain the incongruities.*

Section 165—Court's power to put questions—Held: is unlimited—No party is entitled to object to such questions—Court has a duty to put such E *questions to a witness to enable him to explain inconsistent or contradictory statements.*

Code of Criminal Procedure, 1973:

Section 165—Search—By police officer—Independent person— F *Reluctance to become a witness—Held: Normally a person is reluctant to witness a search and seizure operation especially in a city—Hence, statement of police officer that nobody is willing to stand as witness cannot be spurned down as improbable.*

Section 166—Search—By police officer—Outside the limits of his own G *police station—Permissibility of—Held: When there is delay in requisitioning the services of the local police station and such delay may defeat the purpose of the search, the Investigating Officer may conduct the search himself at that other place—However, such IO should comply with the requirements of S.166(4).*

H *Criminal Trial:*

Eyewitness—Solitary eyewitness—Foreign national—Left the country before trial started—Sensational case transformed to one of circumstantial evidence alone—Held : Undertaking should have been obtained from foreign national to return to the country to give evidence—Lack of alacrity shown by the State agency in a sensational case deserves reprobation. A

Absconding of accused—Effect of—Held : Asbsconding by itself has no decisive implication—However, it has utility to form a link to concatenate the full chain. B

Bloodstain—Recovery of—From the scene of crime—Evidentiary value of—Held: Is not decisive enough to point to the involvement of accused in the crime—However, if there are other circumstances, such bloodstain may lead to an inference against the accused—Evidence act. C

Strictures :

Judicial strictures—Basic requirements—Principle of Natural justice—Observance of—Held: Person concerned should be given the opportunity of being heard in the matter—Otherwise the adverse remarks would be in violation of the principles of natural justice—On facts, adverse remarks expunged as no such opportunity was given to the person concerned. D

Words and Phrases : E

"Books of accounts"—Meaning of—In the context of S.34 of the Evidence Act, 1872.

The appellant-accused (A2) was convicted under Section 302 of the Penal Code, 1860 and the appellant-accused (A1) was convicted under Section 411 IPC. The trial court had made certain adverse observations against PW-30. The conviction and the adverse observations were confirmed by the High Court. Hence this appeal. F

According to the prosecution the accused persons in a gypsy abducted a jeweller after dragging out his friend (a German National) who was travelling with him. Subsequently the jeweller was found lying dead on a road side and A2 had absconded from the scene of crime. Later on the local police arrested A2 with a revolver from a place, which was outside the limits of the local police station. A bloodstain, which was found to be of the same blood group as that of the deceased, was recovered from the motorcycle belonging to A1. The German G H

A National was cited as the solitary eyewitness, but he was not examined since he had left the country before the trial started.

It was the further case of the prosecution that A2 had stayed in a hotel on the next day of the murder and had written a different name in the hotel register. PW-30 had conducted the test identification of the jewelleries
B recovered from the accused person. In cross-examination PW-30 had answered that he might have correctly recorded the details of the jewelleries in the memo of seizure or he was not able to recollect. The Public Prosecutor did not put a single question to PW-30 in re-examination to seek his clarification.

On behalf of the appellants-accused it was contended that the entry in
C the hotel register by itself was of no avail on the language of Section 34 of the Evidence Act, 1872; that the very recovery of the revolver from A2 was illegal as it was done in violation of Sections 165 and 166 of the Code of Criminal Procedure, 1973; that the revolver produced in court as recovered from A2 was in fact found lying in the gypsy on the next day of the murder
D which showed that the firearm was planted by the police; and that the absconding of A2 by itself need not necessarily lead to the inference of culpable mind against the A2.

Disposing of the appeal, the Court

E HELD : 1. Section 34 of the Evidence Act, 1872 contains the rider that "such statement shall not alone be sufficient evidence to charge any person with liability'. In the first place the provision deals only with "books of accounts". It primarily pertains to pecuniary transactions. The expression "books of accounts" means books in which merchants, traders or businessmen generally keep their accounts i.e. statements of debits and credits
F or receipts and payments. A register kept at the counter of a hotel need not contain any statement of account. So, until it is shown that such register also pertained to the pecuniary transactions involving the customers of the hotel, the same cannot be treated as a book of accounts. In the second place, even if it is assumed that a register kept in a hotel can be treated as a book of
G accounts, the entry therein cannot become the sole premise to charge a person with liability. The entry found in the register kept at the hotel can only show a circumstance that A2 has written in it some name other than his own name as the person who occupied a particular room in the hotel. Only A2 knows why he wrote a different name. In the absence of any explanation from him it is open to the court to draw an inference that A2 had some reasons to conceal
H his identity to the hotel people and hence he wrote a pseudonymous name in

the register. [84-F-H; 85-A] A

2. The disappearance of A2 from the locality was contemporaneous with the apprehension of A1. Even after resorting to legal measures to trace out A2 he remained underground until he was caught unawares. In the aforesaid broad features the absconding of A2 cannot be sidestepped as an innocuous circumstance. Of course absconding by itself has no decisive implication, B nevertheless it has utility to form a link to concatenate the full chain. [85-C]

3.1. Admittedly, no independent person of the locality was called to witness the search despite the fact that it is a very populous area of the metropolis. No independent witness has affixed his signature on the Seizure Memo. The police officer said that he made an effort to secure at least two C persons from the locality but none was willing to be a witness. It is no surprise that any of the traders of the locality would be unwilling to offer his service as a witness to any police action if he knew that he would have to bear all the sufferings thereafter, to give evidence in a Criminal Court, more so, when that court would be at a far off place in a different State altogether. City people D are quite conscious of such consequences and they would normally be wary to signify to such witnessing. The evidence of the police officer that nobody was willing to stand as a witness in the seizure memo cannot, therefore, be spurned down as improbable. [86-D-F]

3.2. It is evident from Section 166(3) of the Code of Criminal Procedure, E 1973 that it permits an investigating officer belonging to one police station to search any place falling within the limits of another police station in certain exigencies. One such exigency is when there is a possibility of delay in requisitioning the services of police personnel of another police station and such delay could defeat the very purpose of the search, then the investigating F officer can proceed to that other place and conduct the raid or search by himself. However, when he does so he is obliged to conform to certain requirements as prescribed in Section 166(4) Cr.P.C. Therefore, there is no merit in the contention that the search was not in conformity either with Section 165 or Section 166. [87-E-F; 88-A]

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4. If any firearm were found lying in the Gypsy the police would not suppress that fact in the document, which was prepared contemporaneously. There were a number of police officers and a number of people looking on. In such a situation the police would most certainly have mentioned in the seizure memo if there were any firearm lying in the Gypsy because it is not that easy to suppress such a vital material. That apart, it is too much to assume that H

A the police concealed that crucial weapon in the seizure memo with the farsighted object of using that weapon for planting it elsewhere five months later for a concocted and fake recovery. If actually a firearm was found lying in the Gypsy, it is inconceivable that the police would not have taken it into custody and forwarded it to the Forensic Science Laboratory to check up whether it was the same firearm, which the assailant could have used for
B murdering the deceased. These broad features cannot be allowed to submerge to the bottom and a concurrent finding made by the two courts on that aspect be thrown overboard. [89-B-D]

5. The recovery of the bloodstain having the same blood group as that of
C the deceased from the motorcycle belonging to A1 is not a circumstance decisive enough to point to the involvement of that accused in the murder of the deceased. If there were other circumstances, apart from the recovery of some jewellery belonging to the deceased from the possession of this accused, perhaps the aforesaid circumstance (relating to the bloodstain found on the motorcycle) would have lent support to an inference against him. [90-C]

D

6.1. The trial court and the High Court should have avoided making unsavour comments against a witness in such a manner as to entail serious implications on his career, merely because the answers which were extracted from him through cross questions contained contradictions or inconsistencies. The prosecution cited PW-30 and the chief examination was conducted by a
E Public Prosecutor. Once the witness was cross-examined the Public Prosecutor had an opportunity under law to put such questions as were necessary for "explanation of matters referred to in cross-examination". It is understandable as to why the Public Prosecutor did not put a single question at re-examination stage, at least for the purpose of giving him opportunity to
F explain such incongruities, which fell from his mouth during cross-examination. [91-G-H]

6.2. If the trial court felt that some of the answers given by that witness during cross-examination were so inconsistent or contradictory and that such answers *per se* required judicial castigation that court also had a duty to
G invoke its powers envisaged in Section 165 of the Evidence Act, 1872. The width of the powers of the court to put questions is almost plenary and no party can possibly raise an objection thereto. [92-B]

State of Rajasthan v. *Ani,* [1997] 6 SCC 162, relied on.

H 6.3. In the present case when the Public Prosecutor failed to utilize the

opportunity afforded by law to ask PW-30 such questions as were necessary for explanation of the matters referred to in cross-examination, and when the trial Judge also failed to invoke the plenary powers to put such questions as he should have put regarding the answers given in cross-examination it was unfair, and uncharitable to a witness to shower him with judicial reprobation in the judgment. Such disparaging remarks and the direction to initiate departmental action against him could have very serious impact on his official career. [92-G-H] A B

6.4. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW-30. [93-B] C D

State of UP v. *Mohd. Naim,* [1964] 2 SCR 363; *Ch. Jaga Ram* v. *Hans Raj Midha,* [1972] 1 SCC 181; *R.K. Lakshmanan* v. *A.K. Srinivasan,* [1975] 2 SCC 466; *Niranjan Patnaik* v. *Sashibhusan Kar,* [1986] 2 SCC 569; *State of Karnataka* v. *Registrar General,* (2000) 5 SCALE 504 and *Dr. Dilip Kumar Deka* v. *State of Assam,* [1996] 6 SCC 234, relied on. E

6.5. The disparaging remarks made against PW-30 by the trial Judge as well as the High Court in the judgments impugned are expunged. The direction to proceed against PW-30 departmentally would also stand deleted. [93-G] F

7. When charge-sheeted by the investigating officer this was not a case based on circumstantial evidence as the German National was cited as the solitary eyewitness. But he was not examined by the prosecution for which there was no satisfactory explanation at the outset. But the prosecution could not examine that German National as he had already left the country before the trial started. He should have been allowed to go back only on an undertaking that he would return to India for giving evidence in this case, he being the solitary eyewitness. The prosecution and the State did not satisfactorily explain as to why such a precautionary measure was not adopted. This lapse rendered the prosecution to transform this case to one of circumstantial evidence alone. In this context it may be pointed out that even G H

A **the High Court had observed that it was "a sensational case pertaining to the robbery and murder for which various teams of police officers were constituted." The lack of alacrity shown by the State agency in a case, which the High Court described as sensational, deserves only reprobation. [83-C-E]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 779
B of 1998.

From the Judgment and Order dated 22.4.98 of the Rajasthan High Court in Crl. A. No. 501 of 1995.

WITH

C

CRIMINAL APPEAL NO. 645 of 1999.

From the Judgment and Order dated 22.4.98 of the Rajasthan High Court in Crl. M.M. No. 856 of 1995.

D WITH

CRIMINAL APPEAL NOS. 679-680 of 1999.

From the Judgment and Order dated 22.4.98 of the Rajasthan High Court in D.B. Crl. A. No. 502/95 and 514 of 1997 Old No. 9 of 1996.

E U.R. Lalit, Sushil Kumar, Uday Umesh Lalit, Sushil K. Jain, Yatendra Sharma, A. Misra, Prashant Kumar, A.P. Dhamija, Manish Singhvi, Ms. Sandhya Goswami, K.S. Bhati, Sajeeb Kumar and Ritish Aggarwal for the appearing parties.

F The Judgment of the Court was delivered by

THOMAS, J. A jeweller of Jaipur (Gulshan Makhija) was murdered on his way back home from his jewellery mart. He was abducted by two persons who intercepted the Gypsy (Jeep) driven by him on the night of 23.2.1994 with bags of jewellery kept in the vehicle. The abductors came on a motorcycle
G and took the jeweller to some distance where he was shot dead. The assailants decamped with a big booty consisting of valuable jewellery. There was one more person in the gypsy - a family friend by name Michael Hens (a German national who had a short sojourn at Jaipur as a tourist). He was jostled out of the gypsy before they abducted the deceased.

H Five persons were arraigned by the police for the said abduction and

murder. But the trial court convicted only two among them for the aforesaid offences (A1 Sharad Dhakar and A2 Manish Dixit), and the other three were acquitted. The High Court confirmed the said conviction only as against A2 Manish Dixit, and the offence against A1 Sharad Dhakar was found to be limited to Section 411 of the Indian Penal Code.

More details of the occurrence are these:

Gulshan Makhija's family was running the jewellery shop called "Star of India" at Ashoka Hotel building, Jaipur. He used to be in the shop everyday till it was closed in the night. On 23.2.1994 he called his mother over phone and told her that one guest would also be with him for dinner and that both would reach home soon. But the unfortunate mother could never see his son alive thereafter.

Gulshan Makhija and his German friend together set out from his shop in a brand new gypsy on the night after closing his shop. He carried with him a bulk of jewellery including gold, silver and valuable stones. As they reached Janpath at Shyam Nagar (near Bansal Hospital) the jeep was blocked by the two persons who rode on a motorcycle. One of them dragged Michael Hens out of the jeep and then pointed a revolver at him. He then pushed the jeweller off the driving seat and himself occupied that seat and drove the jeep keeping the dump-founded deceased on the side seat. The jeep disappeared from the sight of the sole eye-witness and the jeep was followed by the other assailant on the motorcycle.

The German tourist (Michael Hens) somehow managed to reach the house of the deceased and divulged to the inmates thereof in his broken English of what happened. The brothers of the deceased took Michael Hens to the police station (Sodala at Jaipur) and lodged a complaint which became the basis of the FIR for offences under Sections 365 and 379 of the Penal Code.

On the next morning an anonymous phone call reached the officer-in-charge of Sodala police station that a white coloured gypsy was lying abandoned at Dayal Nagar Extension (near Gopalpur Bypass). Police then rushed to that place and found the vehicle lying on a side road. Dead body of Gulshan Makhija was seen in the vehicle with head injuries. Police noticed two bags of ornaments strewn on the road near the vehicle and some other bags of ornaments were lying inside.

On 8.3.1994 police received a phone call at Vidhayakapuri police station that an attache was lying abandoned near Dhuleshwar Bagh Colony. The

police traced out the spot and found the attache and a bag also which contained nearly forty-two kgs. of ornaments, besides some documents relating to Gulshan Makhija. Police lifted the fingerprints noticed on the attache and the bag.

On 14.3.1994 A1 Sharad Dhakar was arrested by the police. On the strength of information elicited from him police recovered some ornaments from a buried condition on the floor of "Universal Automobile Garage." A motorcycle (RJM 6373) was also recovered pursuant to the information collected from the same accused.

After Sharad Dhakar was apprehended police was in search of Manish Dixit (A2) but he was absconding even after proceedings were taken against him under sections 82 and 83 of the Code of Criminal Procedure (for short the "Code"). As he was not traced out despite such steps he was published as a proclaimed offender. However, in July 1994 police got sleuth information that he was moving around in Delhi, and they made close watch to locate him. On 12.7.1994 they got some indication that he could be found at Alka Hotel in Connaught Place, New Delhi. The investigating officer made a sudden raid at that place and caught him. A revolver (.455 bore - bawale - mark-4, bearing No. 93255) was recovered from his person along with some live cartridges. On the strength of information elicited from him the investigating team recovered three Kgs. of silver ornaments from the basement of the house of Rahul Sharma (A4).

The said arrest was followed by the arrest of three more accused who were arraigned as A3 to A5. After completing the investigation police charge-sheeted the case against all of them, Sharad Dhakar (A1) and Manish Dixit (A2) for the main offences. The trial court acquitted the last three accused and convicted A1 Sharad Dhakar and A2 Manish Dixit of the offences under Sections 302, 364 read with 120B and also Section 34 of the IPC and sentenced them to imprisonment for life on the main count and to lesser term for the other counts. Both the convicted persons preferred separate appeals before the High Court of Rajasthan. The State filed an appeal against acquittal of the three accused. Subsequently, PW30 Devender Sharma, a Tehsildar filed a petition in the High Court for expunging certain observations made against him by the trial judge in respect of the evidence given by him. All these were heard together and a Division Bench of the High Court confirmed the conviction and sentence passed on A2 Manish Dixit and dismissed his appeal. As for A1 Sharad Dhakar the Division Bench found that he could only

be convicted under Section 411 of the IPC and hence he was acquitted under Sections 302 & 364 read with 120B IPC. The appeal filed by the State and the appeal filed by PW30 were dismissed. Hence these appeals by Special Leave, one by A2 Manish Dixit and the other by the State against the acquittal of A1 of the offences under Sections 302 and 364 read with 120B IPC and the third by PW3 Devender Sharma against the adverse observations made against him.

When the case was charge sheeted by the investigating officer this was not a case based on circumstantial evidence as Michael Hens was cited as the solitary eye-witness. But he was not examined by the prosecution for which we did not get any satisfactory explanation at the outset. But Shri Sushil Kumar Jain, learned counsel for the State of Rajasthan, submitted to us under instructions that prosecution could not examine that German tourist as he had already left the country before the trial started. We feel that he should have been allowed to go back only on an undertaking that he would return to India for giving evidence in this case, he being the solitary eye witness. Why the prosecution and the State did not adopt such a precautionary measure is not explained to us satisfactorily. This lapse rendered the prosecution to transform this case to one of circumstantial evidence alone. In this context we may point out that even the High Court had observed that it was "a sensational case pertaining to the robbery and murder for which various teams of police officers were constituted". The lack of alacrity shown by the State agency in a case which High Court described as sensational deserves only reprobation from us.

To obviate the said difficulty the Public Prosecutor in the trial court made a futile attempt to render the statement made by Michael Hens to the inmates of Gulshan Makhija as evidence falling within the purview of Section 6 of the Evidence Act. That attempt gained success at the trial stage as the Sessions Judge approved the contention. But the Division Bench of the High Court has very rightly repudiated such a contention. As the counsel for the State did not make even an attempt to render such statement admissible in evidence, we are relieved of the task to deal with that statement.

While dealing with the case against A2 Manish Dixit we noticed that the following circumstances were projected against him and were found established by the prosecution: (1) On 24.2.1994 he stayed at hotel Sanjay (Jaipur) in the pseudonymous name Ramesh Chander Sharma. (2) He absconded from the scene soon after A1 was apprehended. (3) On 12.7.1994

A he was arrested at Connaught Place, New Delhi and the revolver (described above) was taken from his person (4) When PW-41 the ballistic expert examined the bullet recovered from the head of deceased Gulshan Makhija and the revolver together he found that the said bullet could only have been fired from the said revolver. (5) On 18.7.1994 the investigating officers recovered three bags of ornaments from the basement of the house of A4, pursuant to B the information elicited from Manish Dixit. (Those ornaments were in the possession of the deceased at the time of his abduction).

If those circumstances were established by the prosecution there is little scope to contend that its cumulative result would be different from the C guilt of Manish Dixit in the involvement of the murder of Gulshan Makhija. The Sessions Court and the High Court have concurrently held that those circumstances were well established by the prosecution with reliable evidence.

The first circumstance was proved with the help of two items of evidence. One is the Register of hotel Sanjay in which there is an entry made D on 24.2.1994 that a person who styled himself as "Ramesh Chander Sharma" had stayed in the hotel. Second is the evidence of the hand-writing expert who said that the hand which wrote the said entry was that of Manish Dixit. Evidence of those two items has been accepted by the two Courts. But Sri U.R. Lalit, learned Senior Counsel who argued for Manish Dixit contended that the said entry by itself is of no avail on the language of Section 34 of E the Evidence Act.

True Section 34 contains the rider that "such statement shall not alone be sufficient evidence to charge any person with liability". In the first place the provision deals only with "books of accounts". It primarily pertains to pecuniary transactions. The expression "books of accounts" means books in F which merchants, traders or businessmen generally keep their accounts i.e. statements of debits and credits or receipts and payments. A register kept at the counter of a hotel need not contain any statement of account. So until it is shown that such register also pertained to the pecuniary transactions involving the customers of the hotel the same cannot be treated as a book G of accounts. In the second place, even if it is assumed that a register kept in a hotel can be treated as a book of accounts, the entry therein cannot become the sole premise to charge a person with liability. The entry found in the register kept at Sanjay Hotel can only show a circumstance that A.2 (Manish Dixit) has written in it the name 'Rakesh Chander Sharma' as the person who occupied particular room in the hotel on 24.2.1994. Why did A.2 H write such a name in the register on the said date which was the immediately

following date of the murder of Gulshan Makhija. He only knows why he wrote a different name. In the absence of any explanation from him it is open to the Court to draw an inference that A.2 (Manish Dixit) had some reasons to conceal his identity to the hotel people and hence he wrote a pseudonymous name in the register.

Regarding the circumstance that Manish Dixit absconded from the scene it is contended that absconding by itself need not necessarily lead to the inference of culpable mind against the absconder. Learned counsel submitted that Manish Dixit was reporting to the police till 6.3.1994 and hence he could not be treated as an absconder at all. In this context it has to be pointed out that the disappearance of A.2 (Manish Dixit) from the locality was contemporaneous with the apprehension of A.1 (Sharad Dhaker). Even after resorting to legal measures to trace out A.2 (Manish Dixit) he remained underground until he was caught unawares. In the aforesaid broad features the absconding of A.2 (Manish Dixit) cannot be side-stepped as an innocuous circumstance. Of course absconding by itself has no decisive implication, nevertheless it has utility to form a link to concatenate the full chain.

On the evidence pertaining to the recovery of the revolver from the person of A.2 (Manish Dixit) on 12.7.1994 Shri U.R. Lalit made a two-pronged attack. First is that the very recovery is illegal as it was done in violation of the legal requirements. Second is that the revolver produced in court as recovered from A.2 (Manish Dixit) was in fact found lying in the Gypsy on 24.2.1994.

Before dealing with the said argument we may point out that there is no dispute that the said revolver is the very same revolver used by the assailant (whoever would have been he) for killing Gulshan Makhija. This premise remains unassailable in view of the unimpeachable evidence given by the ballistic expert PW-41 (DR. P.S. Manocha) who testified that the bullet recovered from the head of the deceased was closely examined and found to have been fired from Exhibit W-1 revolver itself. Of course Shri U.R. Lalit made a bid through the written arguments submitted, to contend that the said opinion of the ballistic expert cannot become conclusive evidence to show that the said bullet could only have been fired from the said revolver. He also made an attempt to show that the bullet forwarded to the expert need not have been the same as recovered from the head of the deceased.

We are not disposed to countenance the said far-fetched contention at this late stage particularly in view of the concurrent finding arrived at by the

A two Courts on the said factual issue. That apart, even the alternative contention of the defence is that the revolver was collected from the scene of occurrence itself. Hence it is an idle exercise to delineate the contention that a different revolver might have been examined by the expert. Moreover, it is unnecessary to repeat the reasons propounded by the expert to reach that conclusion because the trial court and High Court have dealt with them in great detail.
B

If the said revolver was found in the possession of A.2 (Manish Dixit) its forceful legal implication against him regarding his involvement in the murder of Gulshan Makhija cannot be gainsaid. Knowing the extent of its implication learned counsel focussed his attack on that very circumstance
C itself. At any rate, we are bound to deal with the arguments focussed on the said circumstance, for, the said circumstance has a decisive effect. If the argument addressed by the learned counsel on that score gets acceptance the benefit of it would help the accused in a great measure.

According to the learned senior counsel, recovery of the revolver was
D in violation of Sections 165 and 166(3) of the Code. Regarding Section 165 it is admitted that for the search conducted at Alka Hotel, Connaught Place, New Delhi, no independent witness of the locality was called despite the fact that it is a very populous area of the metropolis. True no independent witness has affixed signature on Ext. P.80 - Seizure Memo. The police officer said that
E they made an effort to secure at least two persons from Connaught Place but none was willing to be a witness. It is no surprise that any of the traders of Connaught Place would be unwilling to offer his service as a witness to any police action if he knew that he would have to bear all the sufferings thereafter, to give evidence in a criminal court, more so, when that court would be at a far off place in a different State altogether. City people are quite conscious
F of such consequences and they would normally be wary to signify to such witnessing. The evidence of the police officer that nobody was willing to stand as a witness in Ext.P-80 cannot, therefore, be spurned down as improbable.

G Section 166 of the Code deals with searches made outside the limits of the police station concerned. Sub-section (1) thereof enables the officer in charge of one police station to require the services of the officer in charge of another police station. It is optional on the former to do so. Sub-section (2) enjoins a duty on the latter to conduct the search on being so requisitioned by the former. Sub-sections (3) and (4) are relevant as PW-35 (Umed singh)
H and PW-41 (Dr. P.S. Manocha) (Himmat Singh) (both investigating officers

from Jaipur) opted to conduct the search for A2 (Manish Dixit) at Delhi, by themselves. Those two sub-sections read thus:

> "(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub- section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.
>
> (4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165."

It is evident from sub-section (3) that it permits an investigating officer belonging to one police station to search any place falling within the limits of another police station in certain exigencies. One such exigency is when there is possibility of delay in requisitioning the services of police personnel of another police station and such delay could defeat the very purpose of the search, then the investigating officer can proceed to that other place and conduct the raid or search by himself. However, when he does so he is obliged to conform to certain requirements as prescribed in sub-section (4). One is that he shall inform the officer in charge of the other police station and send him a copy of the list prepared by him in the search. Second is that he should send the copies of the search documents to the nearest Magistrate who has the competence to take cognizance of the offence.

What is the basis of the argument that the aforesaid requirements have not been complied with in respect of the search made by the investigating officers at Alka Hotel in Connaught Place, New Delhi? PW-37 (Sanjay Aksetriya) the Circle Officer of the police station under whose leadership the raid was conducted at Alka Hotel has said in cross-examination that he had given the information to the higher officer of the area who agreed to inform the police officers of Delhi at their own level. There can be no grievance that

A a copy of the search has not been forwarded to the Court concerned.

On the aforesaid reasons we do not find any merit in the contention that the search made at Alka Hotel was not in conformity either with Section 165 or Section 166 of the Code.

B The other contention is that a revolver was found in the Gypsy on 24.2.1994 and if that was with the police the recovery of revolver from A2 at Alka Hotel on 12.7.1994 could only have been the result of a planting of the firearm at the hotel. The basis for the said contention is the testimony of PW-4 (Bhanwar Lal), PW-6 (Rajendra Kumar), PW-9 (Vijay Kumar) and PW-19 (Lala Ram Yadav).

C

It is unnecessary to deal with the evidence of PW-4 and PW-9 as Public Prosecutor had treated them as hostile on the ground that they tried to help the accused by stating so. PW-19 is not of much use because all that he said, that too in cross-examination, was that he had seen "one revolver type object lying on the front side". He then added that it was not fully visible to him.

D

But the evidence of PW-6 (Rajendra Kumar) cannot be bypassed as the other three witnesses because even in chief examination itself that witness has said like this: "There I saw one Gypsy being parked in which the items of gold and silver were lying and below the foot rest of the steering of the rear seat a pistol of iron colour was lying and that was seized by the police."

E

Shri U.R. Lalit, learned senior counsel, who argued for Manish Dixit contended that the aforesaid evidence of PW-6 is binding on the prosecution particularly because the Public Prosecutor did not declare him hostile and no effort was made by him to show what the witness said was untrue. Shri Sushil

F Kumar Jain, in answer to that argument, submitted that the mere lapse on the part of the Public Prosecutor for not declaring PW-6 as hostile should not be taken as a conscious admission made by the said Prosecutor that what the witness said on that score was true. Shri Sushil Kumar Jain highlighted two aspects in order to ignore the above evidence of PW-6. First is that the said

G witness was not an attestor nor a witness in Ext. P.18 Memo which was prepared relating to the Gypsy. Second is that PW-6 was not cited nor examined to say anything about the Gypsy or its seizure. According to the learned counsel, PW-6 had overshot by saying something which was not the point for which he was cited by the prosecution and it was a lapse on the part of the Public Prosecutor who perhaps would have inadvertently missed

H hearing the witness stating that fact.

We may look at this aspect from a broader angle. On 24.2.1994 a team of Rajasthan Police found a Gypsy lying on the roadside and they prepared Ext.P.18 Memo. If any firearm was then lying in the Gypsy why should the police suppress that fact in the document which they prepared contemporaneously? It should be remembered that there was a number of police officers and a number of persons looking on. In such a situation the police would most certainly have mentioned in Ext.P.18 if there was any firearm lying in the Gypsy because it is not that easy to suppress such a vital material. That apart, it is too much to assume that the police concealed that crucial weapon in Ext.P.18 with the far sighted object of using that weapon for planting it elsewhere five months later for a concocted and fake recovery. If actually a firearm was found lying in the Gypsy on 24.2.1994, it is inconceivable that the police would not have taken it into custody and forwarded it to the Forensic Science Laboratory to check up whether it was the same firearm which the assailant could have used for murdering the deceased. In this context we may note that Ext.P.18 which was prepared on 24.2.1994 relating to the Gypsy was promptly forwarded to the Court.

All the above broad features cannot be allowed to submerge to the bottom and a concurrent finding made by the two Courts on that aspect be thrown overboard merely because of an uninvited oral vibration made by PW-6. The least which can be commented on the Public Prosecutor who examined that witness, for not making any attempt to probe into that answer is that it smacks of irresponsibility in conducting the prosecution if he was an experienced Public Prosecutor.

The next circumstance is the recovery of quite a large number of ornaments on the strength of the statement made by Manish Dixit to the investigating officer. That statement attributed to the accused is convincingly clear that it was he who concealed such ornaments in the house of a co-accused. The only argument raised by Shri U.R. Lalit on that aspect is that the police had already conducted the search of the premises of that co-accused immediately after his arrest. There was a long interval between that earlier search and the recovery effected by the police on the strength of the statement made by Manish Dixit. Very probably Manish Dixit would have chosen such a place to conceal the ornaments on a thinking that the said place is safer than other places as the possibility of a second search at the same place would be too remote.

We are, therefore, not persuaded to interfere with the conviction passed on A2 for the offence found against him.

A About A.1 (Sharad Dhakar) the proved circumstances are too scanty for coming to the conclusion that he too was involved in the abduction and murder of Gulshan Makhija. Shri Sushil Kumar Jain relied on the circumstance that a blood stain was noted by the Forensic Sciences Laboratory on the motorcycle seized by the police pursuant to the information received from A.1 (Sharad Dhakar) during his interrogation. The said blood stain was found to B be of "O" group. (The blood group of the deceased was also "O"). We would assume that the said circumstance has been established by the prosecution, but that is not decisive enough to point to the involvement of that accused in the murder of the deceased. If there were other circumstances, apart from the recovery of some jewellery belonging to the deceased from the possession C of this accused, perhaps the aforesaid circumstance (relating to the blood stain found on the motorcycle) would have lent support to an inference against him. As it is, we find it difficult to reverse the order of acquittal passed in favour of A.1 (Sharad Dhakar) in respect of the major counts of offences. Appeal filed by the State against A.1 (Sharad Dhakar) is only to be dismissed.

D This takes us to the appeal filed by one Devendra Kumar Sharma (who was examined in this case as prosecution witness - PW. 30) complaining of the observations made against him by the trial court as well as the High Court. When he was examined in Court he was holding the post of Sub-Registrar, Jaipur. On 9.6.1994 he was holding the post of Tehsildar, Jaipur. (Perhaps in that capacity he was ex-officio Executive Magistrate also). His services were E requisitioned by the Investigating Officer for conducting the test identification of jewelleries recovered in this case. When he was examined as prosecution witness for speaking to the said test identification, the Public Prosecutor during the examination-in-chief elicited a few facts from him pertaining to those aspects and the documents prepared in connection therewith were F marked through him. When he was cross-examined he was asked about the seal impressions found on the packets which contained the recovered jewelleries. He answered that he did not compare the impression with any other seal. He was then confronted with the memo of seizure (Ext.P.28) and he was asked whether he had recorded the fact therein truly. He answered thus: "It might have been correctly recorded in that memo or I may not be G able to recollect." After the cross-examination was over the Public Prosecutor did not put a single question in re-examination. This was either because he did not find any need to elicit any explanation from the witness or because the Public Prosecutor was inattentive to the implications regarding the answers elicited by the cross-examiner from that witness.

H But the trial court came down very harshly against the said witness and

made the following castigating observations against him in the judgment: A

> "The statement of such a responsible officer like Tehsildar opposing the Ferd made by him shows either ex.P-20, 21 and 28 were written wrong or he has made wrong statement before the Court. In any circumstances, this action is highly unexpectable from the responsible officer of such status. Therefore, I would like to bring to the notice B of the State Government that in this regard appropriate action should be taken against him, so that any officer does not make such a false report or does not give false evidence in the Court."

When PW-30 noticed the disparaging remarks made against him he moved the High Court under Section 482 of the Code to have those remarks C expunged. But the Division Bench of the High Court, after dealing with the evidence given by the witness pointed out that even after refreshing his memory the witness did not reconcile with the inconsistencies in his statement with the contents of the documents prepared by him. The Division Bench thereupon made the following observations: D

> "It is needless to mention that the role of persons who conducted test identification parade is very important. He is expected to take all necessary precautions while conducting test parade. He is also required to depose correctly before the court of law and not to deliberately make vague, confusing, inconsistent and contradictory statements E against the contents of the documents prepared and order passed by him. The observations made by the learned trial judge do not amount to abuse of process of law. We therefore, do not find any valid and sufficient reason to expunge the impugned observation/remarks made by the trial court against him. Hence this Cr. Misc. Petition filed under s.482 Cr.P.C. deserve to be dismissed." F

In our opinion, both the trial court and the High Court should have avoided making such unsavory comments against a witness in such a manner as to entail serious implications on his career, merely because the answers which were extracted from him through cross questions contained G contradictions or inconsistencies. It should have been remembered that PW-30 (Devendra Kumar Sharma) was cited by the prosecution and the chief examination was conducted by a Public Prosecutor. Once the witness was cross-examined the Public Prosecutor had an opportunity under law to put such questions as were necessary for "explanation of matters referred to in cross-examination". It is ununderstandable to us why the Public Prosecutor H

A did not put a single question at re-examination stage, at least for the purpose of giving him opportunity to explain such incongruities which fell from his mouth during cross-examination.

If the trial court felt that some of the answers given by that witness during cross-examination were so inconsistent or contradictory and that such B answers per se required judicial castigation the Court also had a duty to invoke its powers envisaged in Section 165 of the Evidence Act. The width of the powers of the Court to put questions is almost plenary and no party can possibly raise an objection thereto. This can be discerned from the language employed in the first limb of the section. It reads thus:

C

> "The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to D any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question."

This Court has indicated the very wide dimension of the powers of the Court under Section 165 of the Evidence Act in *State of Rajasthan* v. *Ani,* E [1997] 6 SCC 162. We extract the following observations which would amplify the position:

> "The said section was framed by lavishly studding it with the word 'any' which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever F he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words 'relevant or irrelevant' in section 165. Neither of the parties has any right to raise objection to any such question."

G

In the present case when the Public Prosecutor failed to utilize the opportunity afforded by law to ask PW-30 (Devendra Kumar Sharma) such questions as are necessary for explanation of the matters referred to in cross-examination, and when the trial judge also failed to invoke the plenary powers to put such questions as he should have put regarding the answers given H in cross-examination it was unfair, and we may say uncharitable to a witness

to shower him with judicial reprobations in the judgment. Such disparaging remarks and the direction to initiate departmental action against him could have very serious impact on his official career. A

Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW-30 (Devendra Kumar Sharma). *State of U.P.* v. *Mohd. Naim,* [1964] 2 SCR 363, *Ch. Jage Ram* v. *Hans Raj Midha,* [1972] 1 SCC 181; *R.K. Lakshmanan* v. *A.K. Srinivasan,* [1975] 2 SCC 466; *Niranjan Patnaik* v. *Sashibhusan Kar,* [1986] 2 SCC 569 and *State of Karnataka* v. *Registrar General,* [2000] 5 Scale 504. B C

It is apposite in this context to extract the following observations made by this Court in *Dr. Dilip Kumar Deka* v. *State of Assam,* [1996] 6 SCC 234: D

> "We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was complete negation of the fundamental principle of natural justice." E F

We, therefore, unhesitatingly allow the appeal filed by PW-30 (Devendra Kumar Sharma) and order expunction of all the disparaging remarks made against him by the trial judge as well the High Court in the judgments impugned before us. The direction to proceed against him departmentally would also stand deleted. G

The appeals are disposed of accordingly.

V.S.S. Appeals disposed of.