

Umesh Kumar Singh Vs. the Flag Officer Commanding-in-chief, Eastern Naval Command, Visakhapatnam

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Court : Armed forces Tribunal AFT Regional Bench Chennai

Decided On : Jan-05-2012

Judge : A.C. Arumugaperumal Adityan, (Member-Judicial) & Lt Gen (Retd) Thomas Mathew, (Member “ Administrative)

Appeal No. : T.A.No.11 of 2011 (W.P.No.21810 of 2000 “ High Court of Andhra Pradesh)

Appellant : Umesh Kumar Singh

Respondent : The Flag Officer Commanding-in-chief, Eastern Naval Command, Visakhapatnam

Judgement :

ORDER

(Order of the Tribunal made by Justice ACA Adityan)

1. The applicant had filed Writ Petition No.21810 of 2000 before the Honourable High Court of Andhra Pradesh challenging the impugned orders of the respondents. After the constitution of this Armed Forces Tribunal, Regional Bench at Chennai, the said Writ Petition has been transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act and renumbered as

T.A.No.11 of 2011. Practically this is an appeal against the conviction of the Court Martial under Section 15 of the Armed Forces Tribunal Act 2007.

2. The applicant-Umesh Kumar Singh is represented by his father Sri Chandrapati Singh. The applicant had filed the Writ Petition before the Honourable High Court of Andhra Pradesh at the time when he was in Central Jail, Visakhapatnam, undergoing sentence of 8 years of Rigorous Imprisonment as per the verdict of the 1st respondent dated 12.10.1999. The 2nd respondent by its order dated 06.07.2000 reduced the period of Rigorous Imprisonment from 8 years to 6 years. It is now represented on behalf of the respondents that the applicant was released on bail on 02.02.2001 and admittedly he was under incarceration from 12.10.1999 to 02.02.2001. Today the applicant is present in the Court and argued his appeal.

3. According to the applicant, the applicant joined as Radio Operator (Special), First Class, No.179159-F, Indian Naval Ship, Circars, Additional Headquarters, Wireless Experimental Unit, Visakhapatnam. The applicants grand-father was a soldier in the Army, who fought in the First World War and was detailed as a prisoner of war for 5 years in Japan. The applicants uncle Sri Jagdeesh Singh fought in the Second World War. The applicants father, who has filed this application on behalf of his son, is also a retired Subhedar Major, Army Medical Corps and he participated in 1962, 1965 and 1971 military operations. The applicant-Umesh Kumar Singh got married at the age of 23 years in May 1997. Under the Naval Regulations, the applicant is not entitled to have his spouse alongwith him till he attains the age of 25 years. The applicant was not granted leave to see his ailing wife. The applicant was also suffering from fits.

3(a) Further, on 04.06.1988 at about 19.20 hours, the Branch Manager of Andhra Bank Extension Counter situated at Utility Complex of INS Virbahu closed the Bank transactions of the day and while he was settling accounts alongwith Cashier, he noticed two person entering into the Bank armed with country-made pistol wearing coloured helmet by lifting half closed shutter one of them entered stating that he wanted to open an account in the bank. The third person entered later and the three accused threatened the Manager and the

Cashier of Andhra Bank Extension Counter, INS Virbahu, at gun point and got the Iron safe opened and put the money in their bag and locked up the bank officials in the safe room and escaped on unnumbered metallic blue scooter. The total amount said to have been looted was Rs.2,54,371/-. The Naval Police conducted an investigation, but were not in a position to make any headway for want of identity of the persons. The Bank Manager made a statement before the Police that he could not see the identity of the person by reason of the helmets and masks. In the FIR also except for general description there were no clues as to the identity of the accused. Thereafter, the Naval Police in these circumstances handed over the matter for investigation to the Civil Police. The applicant while undergoing treatment as an in-patient in INS Kalyani Hospital was discharged on 24.07.1998 at the instance of the Naval Police. The applicant was handed over to the Civil Police. He was beaten and ill-treated while in custody of the Police both Civil and Naval. He was shown as arrested on 30.07.1998 by the Civil Police and was produced before the Magistrate and was lodged in Central Jail, Visakhapatnam and was under remand till 01.01.1999. The Commissioner of Police, Visakhapatnam by letter dated 28.10.1998 advised the Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam, the 1st respondent, to try the applicant and other two accused by Court Martial. A preliminary charge sheet in the case was filed on 26.09.1998 before the VIII Metropolitan Magistrate, Visakhapatnam. No part of the amount of Rs.2,54,371/- was recovered from the applicant and the identity of the applicant as one of the accused in the alleged Bank robbery could not be established. Having felt well that the criminal case would not stand scrutiny even for a moment in a Civil Court, the Commissioner of Police had handed over the accused to be tried before the Naval Court Martial.

3(b) The applicant was issued with a charge sheet dated 29.06.1999 countersigned by the Vice Admiral, Flag Officer, Commanding-in-Chief on 16.07.1999, wherein the charges run as follows:-

1) Did at about 19.20 hours on the 4th day of June, 1998 armed with a country made pistol committed robbery of cash amounting to Rs.2,54,371/- (Rupees Two Lakh Fifty Four Thousand Three Hundred and Seventy One Only) from

Andhra Bank Extension Counter situated at Indian Naval Ship Virbahu, Visakhapatnam by causing fear of instant hurt and wrongful restraint of Shri N.K.Marwaha, Branch Manager and Shri.Nallamuttu Dass, Cashier along with accomplices namely Dhirendra Kumar Singh, Leading Seaman Physical Trainer Second Class, No.173099-H then belong to Indian Naval Ship Anjadip armed with a Khukri and a wooden baton and Ajay Kumar Singh, Seaman First Class Number 168190-A of Indian Naval Ship, Circars, who was also armed with country made pistol and ammunition and thereby committed an offence punishable under Section 392 of Indian Penal Code read with Section 77(2) of the Navy Act, 1957.

2) Did at about 19.20 hours on the 4th day of June, 1998 wrongfully confine Shri N.K.Marwaha, Branch Manager and Shri Nallamuttu Dass, Cashier in the strong room of Andhra Bank Extension Counter situated at Indian Naval Ship Virbahu, Visakhapatnam whilst committing an act of robbery along with two accomplices namely Dhirendra Kumar Singh, Leading Seaman Physical Trainer Second Class, Number 173099-H then belonging to Indian Naval Ship Anjadip and Ajay Kumar Singh, Seaman First Class Number 168190-A of Indian Naval Ship Circars and thereby committed an offence punishable under Section 342 of the Indian Penal Code read with Section 77(2) of the Navy Act, 1957.

3) Was between 4th June, 1998 and 30th July 1998 in possession of Prohibited Arm and Ammunition of description one in number country made pistol with barrel measuring about 7 in length and 2 in circumference and three rounds of 7.62mm ammunition and thereby committed an offence punishable under Section 25(1-A) of the Arms Act 1959 read with Section 77(2) of the Navy Act 1957.

4) Did remain absent without leave from Indian Naval Ship Circars Additional Headquarters 32 Wireless Experimental Unit over 15 days advance of annual leave of 1999 from 12.00 hours on 23rd June, 1998 to 10.00 hours on 7th July 1998 thereby remaining absent without leave for 334 hours and thereby committed an offence punishable under Section 51 of the Navy Act 1957.

3(c). The Court Martial was not in accordance with the provisions of the Navy Act. The very composition of the Members was defective. There were violation of several mandatory provisions of the Navy Act and the Regulations made thereunder, causing serious prejudice to the applicant. Basic material evidence was not produced and the material witnesses were not examined resulting in serious miscarriage of justice. The seizures and recoveries alleged to have been made were in gross violation of mandatory procedure and action taken was procedurally ultra vires. The basic principles, fundamental in the administration of justice in Criminal Law are ignored. The Investigating Officer was also the Prosecution Officer and he was not examined. The trial by the Court Martial was conducted in violation of principles of natural justice resulting in violation of the fundamental rights of the applicant. On the basis of discrepant and inconsistent evidence on material particulars and without a fair trial, Charges 1, 2 and 4 were held proved. The applicant was sentenced to 8 years Rigorous Imprisonment by order dated 28.10.1998 of the 1st respondent. The applicant was also dismissed with disgrace with mulct of 14 days pay and allowance by order dated 12.10.1999. While awarding sentence the competent authority has failed to take into account the period already undergone under trial as provided under Section 155 of the Navy Act. The applicant, aggrieved by the verdict of the 1st respondent, had filed an application under Section 162 of the Navy Act 1957 to the 2nd respondent. The 2nd respondent by order dated 06.07.2000 reduced the period of Rigorous Imprisonment to 6 years from 8 years. The punishment awarded by the 1st respondent modified by the 2nd respondent are also contrary to fundamental rights. In gross violation of the provisions contained under section 97(11) of the Navy Act 1957, the Court Martial had been convened. All the members of the Court Martial were chosen from INS Circars. But, as per Section 97(11), out of the members atleast two members shall be drawn from two different ships. Charge No.4 has no bearing with charges 1, 2 and 3. Charge 1 is under Section 391 IPC whereas Charge 2 is under Section 342 IPC read with Section 77(2) of the Navy Act. Charge 3 relates to an offence under Section 25(1A) of the Arms Act, 1959 read with Section 77(2) of the Navy Act. Charges 1, 2 and 3 are offences committed in the course of the same transaction ie., bank robbery. Charge 4 relates to unauthorised absence and

has no bearing or relation to the bank robbery, in respect of which the other charges 1 to 3 have been framed. Charge 4 ought not to have been clubbed with charges 1 to 3.

3(d). The so-called soiled currency notes, which were not mentioned anywhere in the FIR by Bank Manager, said to have been recovered by Cdr.J.Rooque NPM and his staff and also by Civil Police, were not produced before the Court. Those currency notes said to have been recovered by the Naval Police from one of the suit cases, said to have been seized from D.K.Singhs (A-1) residence and was opened by Naval Police by themselves without calling any Naval or independent civilian witnesses. The said suit case was not opened before any independent witness. This is in violation of Regulation 25 of Regulations for the Navy, Part-II, which direct the investigating authorities to keep Divisional Officer of the Sailors through out the investigation. The value of the currency notes recovered was also Rs.9,000/- only, which could have been easily preserved and kept for production as material object before the Court Martial. The witnesses for recovery and confession were also not examined before the Court Martial. P.W.2 belongs to Naval Police branch and he was subordinate to NPM J.A.Rooque. In answer to Question No.167 to 176,P.W.2 accepted that although he signed the mediators report, but he was not present at the time of recovery and that he saw the weapons only in NPM office. This fact could be verified from defence Exhibit D2 and D3 at page No.109 of Volume.III, which bears his signature. P.W.2 would admit that he had signed at the request of the Civil Police. Material witnesses were not examined. No independent witnesses such as Mediators viz S.Potta Raju (L.W.22) and V.Prasada Rao (VAO)-(L.W.23) were examined. All the Mediators reports were marked through P.W.17-Ramkrishna Rao, Investigating Officer. In this case, the Investigating Officer is also the Prosecutor Cdr-At-Arm D.S.Randhawa and Cdr-At-Arm IJS Kohali. The objections raised by the applicant in this regard were turned down by the Court Martial, which is against principles of natural justice.

3(e). Most of the witnesses were from Naval Provost Branch and prosecutor being senior provost officer had definite influence over these witnesses who work or worked earlier under him and P.W.1, P.W.2, P.W.3 and P.W.26 have

not supported the case of the prosecution. The accused had already been identified to the witnesses before the identification parade could be conducted. P.W.26 Commander (Retd) J.A.Rooque has confirmed in his deposition that Police brought officials from all the three Banks including the two witnesses of Andhra Bank Extension Counter, INS Virbahu. Witnesses like P.W.16 are put up witnesses. The weapons were also photographed and shown to the witnesses even before the witnesses could identify the weapons alleged to have been used in this case. The re-investigation caused unnecessary delay of seven months. The re-investigation done by Naval Authorities is illegal and unlawful. There was a long delay in commencing the trial. The applicant was under custody for more than 8 days without any Court Martial trial. The principle incorporated in Section 86 of the Navy Act 1957 has been violated. The applicant was arrested on 25.07.1998 and was detained for 14 calendar months and 13 days before the award of sentence. So, challenging the verdict of the Court Martial against the applicant, dated 12.10.1999, as modified by the 2nd respondents by order dated 06.07.2000, for an order of re-investigation, this application has been moved on behalf of the applicant by his father.

4. On behalf of the respondents 1 to 3, a joint counter has been filed contending that the accused/applicant herein along with two other accused had committed robbery of Andhra Bank Extension Counter in the premises of INS Virbahu. The applicant was charge-sheeted by the Police authorities before the Metropolitan Magistrate at Visakhapatnam for the charge of Bank Robbery vide Crime No.34/1998 under Sections 392 and 342 of IPC and under Section 25 of the Arms Act. The case was taken over by the Navy under the provisions of Section 475 of Cr.P.C. read in conjunction with Criminal Courts and Courts Martial (Adjustment of Jurisdiction) Rules 1978. The matter was investigated afresh by the Commanding Officer INS Circars for the trial of the applicant by the Court Martial under Regulation 149 of Regulations for the Navy, Part-II (Statutory). After investigation, a Court Martial was convened on 16th July 1999. After examining 29 prosecution witnesses, the Court Martial found the applicant guilty of the charges. The applicant was awarded a sentence of Rigorous Imprisonment for 96 calendar months and to be dismissed with disgrace from the Naval service. The applicant applied for judicial review of the findings and

sentence of the Court Martial before the 2nd respondent - Chief of the Naval Staff. The 2nd respondent in the judicial review had reduced the sentence to Rigorous Imprisonment for 72 calendar months and to be dismissed with disgrace from the Naval Service. The applicant has not exhausted the statutory remedy available to him. Exhibit 39 produced before the Court Martial proceedings brings out the descriptive particulars of the three persons involved in the crime. The entire deposition given before the Court of Cdr-at-Arms (Retd) JA.Rocque from pages 456 to 472 and 486 to 511 in the Court Martial Proceedings Vol.II would be worth reading which would bring about the details as to how the offence got detected and matter reported to the Police Authorities and sequence of actions thereafter. After a fair trial only the Court Martial has convicted and sentenced the applicant on the basis of the oral and documentary evidences. The Court Martial has been constituted in terms of the provisions of the Naval Act. The Members, who have comprised the Court, are from different Unit. The President of the Court Martial is from INS Anjadip and the Members are from basically INS Circars/Addl being depot ship. These members are from different and independent Naval Units/organisations viz., Naval Dockyard, Material Organisation (V), Naval Officer-in-Charge, Visakhapatnam and Warship Acceptance Testing Team (V). The above mentioned units where these members are borne are independent units and are from two different ships. Accordingly, there is no violation of the mandatory provisions laid down for constituting the Court. Exhibit P-54 at page 1350 of the Court Martial Proceeding Vol.III is relevant. The details of the soiled notes are available in deposition given by the Cdr-at-Arms JA Rocque from pages 456, 472 and 486 to 511 in the Court Martial Proceedings Vol-III. Further, the inventory of items made which was recovered from the suitcase at S.No.16(vii) in Exhibit P-1, Page No.1282 of the Court Martial Proceedings Vol.III is relevant. Under such circumstances, the application is liable to be dismissed.

5. On the side of the prosecution P.W.1 to P.W.29 were examined and Exhibit P-1 to P-76 were marked. Exhibit C-1 to C-11 were also marked. On the side of the accused, no witness was examined, but Exhibits D1 to D16 were exhibited.

6. The accused/appellant herein Umesh Kumar Singh, Radio Operator (Special), First Class, Number 179159-F, belonging to Indian Naval Ship Circars Additional Headquarters Wireless Experimental Unit, being a person subject to Naval Law, is charged as under:-

1) Did at about 19.20 hours on the 4th day of June, 1998 armed with a country made pistol committed robbery of cash amounting to Rs.2,54,371/- (Rupees Two Lakhs Fifty Four Thousand Three Hundred and Seventy One Only) from Andhra Bank Extension Counter situated at Indian Naval Ship Virbahu, Visakhapatnam by causing fear of instant hurt and wrongful restraint of Shri N.K.Marwaha, Branch Manager and Shri.Nallamuttu Dass, Cashier along with accomplices namely Dhirendra Kumar Singh, Leading Seaman Physical Trainer Second Class, No.173099-H then belong to Indian Naval Ship Anjadip armed with a Khukri and a wooden baton and Ajay Kumar Singh, Seaman First Class Number 168190-A of Indian Naval Ship, Circars, who was also armed with country made pistol and ammunition and thereby committed an offence punishable under Section 392 of Indian Penal Code, read in conjunction with Section 77(2) of the Navy Act, 1957.

2) Did at about 19.20 hours on the 4th day of June, 1998 wrongfully confine Shri N.K.Marwaha, Branch Manager and Shri Nallamuttu Dass, Cashier in the strong room of Andhra Bank Extension Counter situated at Indian Naval Ship Virbahu, Visakhapatnam whilst committing an act of robbery along with two accomplices namely Dhirendra Kumar Singh, Leading Seaman Physical Trainer Second Class, Number 173099-H then belonging to Indian Naval Ship Anjadip and Ajay Kumar Singh, Seaman First Class Number 168190-A of Indian Naval Ship Circars and thereby committed an offence punishable under Section 342 of the Indian Penal Code read in conjunction with Section 77(2) of the Navy Act, 1957.

3) Was between 4th June, 1998 and 30th July 1998 in possession of Prohibited Arm and Ammunition of description one in number country made pistol with barrel measuring about 7 in length and 2 in circumference and three rounds of 7.62mm ammunition and thereby committed an offence punishable under Section 25(1-A) of the Arms Act 1959 read in conjunction with Section 77(2) of

the Navy Act 1957.

4) Did remain absent without leave from Indian Naval Ship Circars Additional Headquarters 32 Wireless Experimental Unit over 15 days advance of annual leave of 1999 from 12.00 hours on 23rd June, 1998 to 10.00 hours on 7th July 1998 thereby remaining absent without leave for 334 hours and thereby committed an offence punishable under Section 51 of the Navy Act 1957.

7. P.W.1 is Mr.Siripal, Master-at-Arms, No.203938-Y NPM Officer, HQENC. Through P.W.1, Exhibit P-5 Panchanama drawn by him was exhibited. Under Exhibit P-5, one VIP Odyssey 20 inches and one VIP 18 inches sealed suitcases were recovered. P.W.1 has also identified those two suitcases recovered under Exhibit P-5 Panchanama. The VIP Odyssey suitcase dark brown in colour was marked as Exhibit P-6. Exhibit P-7 is light grey colour VIP Suit case. Exhibit P-7(B) is Camouflage print. Exhibits D(1)(a) to (g) are Mediators Report, dated 12th August 1998. In the cross-examination P.W.1 would admit that Exhibit P-5 Panchanama was prepared when a search was conducted in the house of the co-accused D.K.Singh (accused/applicant/appellant in T.A.No.140 of 2010) on 23rd July 1998 at 11.00 hours (Question No.58).

8. P.W.2 is SV Singh, Master-at-Arms, NPM Office, HQENC. According to P.W.2, who had identified the co-accused D.K.Singh, on enquiry with D.K.Singh, he (P.W.2) came to know that Umesh Kumar Singh (accused herein) is a good friend of D.K.Singh (accused in T.A.No.140 of 2010) and that D.K.Singh had sold his scooter to U.K.Singh(accused herein). P.W.2 had proceeded to INHS Kalyani and contacted U.K.Singh, who had informed him (P.W.2) that he was not aware of the whereabouts of DK Singh. But, the accused had admitted that he is a good friend of DK Singh and one of his suitcases is also lying in his quarters. On further enquiry, the accused UK Singh had told that he did not buy the scooter from DK Singh, but he had taken from Bir Nand, CPO. According to the P.W.2, DK Singh had taken the scooter from a show room and the registration number of the scooter is AP31 N 5413, which is at present with DK Singh. On 25th July 1998 UK Singh (accused/appellant herein) was discharged

from INHS Kalyani and was taken to his block and his locker was searched in front of his Divisional Chief. In the locker, a full mask crash helmet in red colour and an air bag in violet colour were recovered. For the said search and for the items confiscated from the possession of UK Singh (accused herein) a Panchanama was prepared (Exhibit P-8, dated 25th July 1998), which was drawn by P.W.2-SV Singh. P.W.2 has also identified the red colour helmet, which was recovered from the locker of UK Singh (accused herein) from INS Circars. Exhibit P-11 is the red colour helmet black tilted visors. P.W.2 also speaks about the seizure of scooter used in the crime bearing No.AP 31 N 541 [Exhibit P- 4(A)] and as per the registration certificate the number of the scooter is AP 31 N 5413 [Exhibit P-4(B)] and as per the registration certificate, the scooter stands in the name of Bir Nand, S/o.Shri K Nand of INS Guldar C/o. FMO, Visakhapatnam. As per the said document, the colour of the Scooter is green. P.W.2 has further admitted that in the registration book the colour of the scooter is mentioned as Green and in the number plate it is written AP 31 N 541. But, in the RC Book it is mentioned as 5413. The number found in the number plate of the scooter is AP 31 N 541 and the number found in RC Book is AP 31 N 5413. The chassis number of the scooter 06FBDM58616 tallies with the chassis number of the scooter in RC Book. Exhibit P-14 is the scooter bearing chassis number 06FBDM58616. P.W.2 has also recorded the statement of all the three accused including UK Singh (accused herein).

9. P.W.3 P.Kumar, Master Chief-at-Arms, speaks about the recovery of dark brown and grey suitcases belonging to DK Singh (accused in T.A.No.140 of 2010) (Exhibit P-3 and P-4). In the grey suitcase, soiled currency notes in the denomination of Rs.1, 2 and 5 were found and in the dark brown suitcase Rs.5,000/- was found. Inventories prepared and signed. RC book for the Bajaj Chetak Blue metallic scooter (Reg No.AP 31N 5413) recovered from the suitcase of DK Singh (accused in T.A.No.140 of 2010). According to P.W.3, UK Singh was discharged from Kalyani and he was taken to his dormitories and his locker was searched in the presence of V Kumar POWTR of HQ 32 WEU. From his locker, red colour full mask helmet and violet colour handbag (Gold star Make) were recovered. On the same day evening, P.W.3 came to Virbahu and contacted duty officer Lt Rao along with Rajesh Kumar, LME and the black

colour full mask helmet without visor was recovered from his locker and scooter Bajaj Chetak AP 31 N 5208 was recovered. Both items were confiscated in the presence of the duty officer Lt Rao and his signature was obtained. According to P.W.3, the co-accused AK Singh had informed that the present accused UK Singh RO 1 was the first man entered into the Andhra Bank of INS Virbahu with a Katta (a country made pistol) in his hand and he was followed by AK Singh (accused in T.A.No.139 of 2010) with Katta (country made pistol) and the last man who entered into the Andhra Bank of INS Virbahu was DK Singh, LSPT-II, who had a chopper and a danda in his hand. According to P.W.3, AK Singh had crossed UK Singh with his Katta in his hand and went to the Manager of Andhra Bank and put the Katta near to his head while shouting Dont move and further telling in Hindi AGAR KOI CHILLAYEGA TO GOLI MARDENGE. Further, DK Singh, LSPT-II, who was having bag with him asked for the bank safe key and thereafter, the cash was put in the bag and all the three accused cautioned the bank staff and he told in Hindi AGAR DUS MINUTE KE BEETHAR KOI CHILLANGEKE KOSHISH AUR HALLA KARNEKE KOSHISH KAREGA TO USKO MARDIYA JAYEGA. Thereafter, all the three accused DK Singh, UK Singh and AK Singh fld away on scooter to Ashoka Park, the residence of DK Singh, LSPT-II, quarter number P-22. AK Singh further informed P.W.3 that the Katta carried by him (AK Singh) was without any ammunition, whereas the Katta carried by UK Singh was filled with ammunitions. He had given the description of the three Katta as one Katta was little bigger and had a barrel like that of 12 bore rifle and another Katta was a similar one and he could not recollect the description for the 3rd Katta. According to P.W.3, besides Katta, he had seen a wooden rod-baton type, a Tyidentity card, few photographs of various sailors, few rounds of 12 bore and 16 bore of rifle and few live rounds of rifle like 303 rifle and 0.22 rifle and rubber stamps. Apart from these Kattas, he had also recollect one Choppar - big knife. Exhibit P-15 is the wooden baton, Exhibit P-16 is four read coloured cartridges of which one is empty. Exhibit P-17 is three in number brass cartridges OFV 7.62-80M62. Exhibit P-18 is one brass cartridge marked KF83-7.62A. Exhibit P-19 is brass cartridge with purple marke on cap and number 7 written on the base. Exhibit -20 is brass cartridge described OK7Z on the base. Exhibit P-21 is Katta of 12 bore rifle type. Exhibit P-22 is Khukri.

Exhibit P-23 is Katta with white body or 7.62 bore barrel. Exhibit P-24 is Katta with metal body of 7.62 bore barrel.

10. P.W.4 Commander (Retd) Chandra Sekahar, who was working as Area Manager (SG) Indian Naval Canteen Services, Visakhapatnam, deposed that a Bajaj scooter was sold to one Bir Nand, but the sale certificate for the said scooter stands in the name of DK Singh. According to P.W.4, the said scooter was sold to Bir Nand, however, the certificate was collected by proxy through DK Singh. Exhibit P-25(a) is Form 21-Sale Certificate in the name of Varun Motors ref. V/2/A/3(i) dated 25th may 1998 signed by area Manager, INCS (V). Exhibit P-25(b) - Form of Indent for purchase of costly/attractive items in the name of Bir Nand, CPO (TEL) No.020509A. Exhibit P-25(c) - Invoice No.791 dated 16th May 1998 issued by Varun Motors, Visakhapatnam. Exhibit P-25(d) - Delivery Challan/gate pass No.747 dated 16th May 1998 issued by Varun Motors. Exhibit P-25(e) - INCS (V) Delivery Note No.LD No.15568 dated 16th May 1998. Exhibit P-25(f) - Form 17 of INCS (V) (office copy) Sl. No.041844 dated 16th May 1998.

11. P.W.5 - Lt Cdr RK Shirgaonkar, who identified DK Singh (accused in T.A.No.140 of 2010), speaks about the duty charge Exhibit P- 26. While examination of P.W.5, the counsel appearing for the accused informed that the accused fell sick. The accused was referred to INHS Kalyani.

12. P.W.6 is Lt VSC Rao. Through P.W.6, Exhibit P-9 (panchanama for the recovery of scooter and Exhibit P-27 to P-31 were marked. According to P.W.6, the sailor was recalled under Exhibit P-29 from leave due to service requirement.

13. P.W.7 - Lt Cdr (SDREG) CL Jha speaks about Exhibit P-33 - Genform No.1170/S dated 26th July 1998 on INS Netaji Subhas relating to DK Singh (accused in T.A.No.140 of 2010).

14. P.W.8 - Shri GVGRK Raju, Assistant Accountant, INCS(V), identifies DK Singh (accused in T.A.No.140 of 2010), who had approached him with the sale letter in duplicate with delivery challen issued by Varun Motors.

15. P.W.9 - Shri GA Prasada Rao, Assistant Accountant, Indian Naval Canteen Service, Visakhapatnam, also identifies DK Singh (accused in T.A.No.140 of 2010).

16. P.W.10 - Shri CDC Patnaik, Manager, Indian Bank Canteen Service, Visakhapatnam, also identifies DK Singh (accused in T.A.No.140 of 2010) as the person who had come to purchase a refrigerator under IPP Scheme on 20th July 1998.

17. P.W.11 - Lt KVRV Rao, INS Virbahu, speaks about the search conducted in the cabin of RajeshKumar, LME. According to P.W.11, in the locker of Rajesh Kumar LME one helmet was found (Exhibit P-12), but, there was no document to show that he had purchased the scooter.

18. P.W.12 - Lt Yadav, the Divisional Office of the accused UK Singh, would depose that the sailor was sent on leave for two months in January 1998 and again on advance of annual leave for 15 days in June 1998. But, the sailor reported 15 days late.

19. P.W.13 is Cdr KK Parashar of ASTT (V). P.W.13 in his evidence would state that the sailor had requested for AFPP loan prior to his leave for Rs.45,000/- and it was granted.

20. P.W.14 - Shri Nagesh Kumar Marwaha, Manager, Andhra Bank Extension Counter, INS Virbahu, would depose that he is working in the said Bank from 26.12.1996. According to P.W.14, on 4th June 1998, at about 19.20 hours, when he and cashier of the Bank were about to close down the business for the day, two persons entered wearing helmets and holding pistols, pointing at P.W.14, demanded the cashier cash. Meanwhile, another person also entered holding khukri in one hand and iron rod in another hand. They had a violet coloured zip bag into which they put the cash they looted. They locked P.W.14 and other inside the room after warning in Hindi JYADA HOSHIYARI MAT DIKHAO VARNA MARR DENG AUR TUMHARI BIWI AUR BACHE ROYENG. According to P.W.14, the robbers locked them inside the room and after five minutes they broke open the ALDROP locking system. At that time

P.W.14s neighbour Mr.Laxmi Narayana Patro just coming out and P.W.14 asked him if he had seen three people with a zip bag and helmets leaving the place. He informed P.W.14 that they had left just then. P.W.14 immediately went to guard room of INS Virbahu and informed them about what had happened. They informed Vijaynagar Gate of naval Dockyard, Visakhapatnam immediately. Thereafter, P.W.14 came back and informed the police and his senior executives. After some time, the Police came along with their finger print experts, photographers and sniffer dog. The amount which was robbed by the accused comes to the tune of Rs.2,54,371/-. Through P.W.14, Exhibits P-39A, P-39B and P-40A to P- 40D were marked. Exhibits P-39A and P-39B are letters dated 4.6.1998 to Sub-Inspector of Police from P.W.14. Exhibit P-40A to P-40D being FIR Number 34 dated 4.6.1998 by the Police Station Malkapuram Crime, Visakhapatnam. In the FIR it was mentioned that the colour of the mask worn by the accused at the time of robbery was orangish red colour made of plastic. (The defence counsel objected to for marking the Mask as Exhibit since P.W.14 was not sure which animals mask he saw on that day). Only one of the accused was wearing tiger face mask. Exhibit C-1 is the face mask of tiger. Exhibit C-2 is photograph of door lock and Exhibit C-3 is photograph of telephone. For the question No.1125, P.W.14 identifies Exhibits P-10, P-11 and P-12 as the helmets the accused were wearing on the day of occurrence. P.W.14 would depose that although in the FIR the colour of the zip bag was mentioned as blue, it was actually violet. P.W.14 identified Exhibit P-13 as the zip bag, which was carried by the accused to the bank at the time of committing the crime. P.W.14 also identified Exhibits P-15, P-21, P-22, P-23 and P-24 (weapons), which were brought by the accused at the time of committing the offence. P.W.14 also identified the accused. For the question No.1131, P.W.14 would explain that he was able to recognise the accused when they were speaking to him (P.W.14) on that day of the incident. Although the accused were wearing helmets, they lifted the visors to make themselves audible, which made P.W.14 to recognise the features of the face of the accused. P.W.14 has further deposed that he was taken to the Metropolitan Magistrate of Railways, before whom he had identified the accused in the central prison. P.W.14 has also spoken about the identification parade and also admits the signature in the

documents prepared during the identification parade.

21. P.W.15 - Shri V.Hanumantha Rao, Sub-Inspector of Police, Finger Prints Expert, Visakhapatnam, in his evidence would state that he is a Finger Print Sub-Inspector and previously Finger Prints Expert and he has passed his All India Board Finger Print Examination at Calcutta. According to P.W.15, on 4th June 1998, he received a telephone message between 20.00 hours to 20.30 hours at his house as well as Control Room people informed him that a vehicle has been sent to take him to the scene of occurrence at Naval Base, Andhra Bank Extension Counter, INS Virbahu. Thereafter, he reached the scene of offence at 21.00 hours in the night and by that time, the police people were present at the bank premises. After his arrival, he observed the scene of occurrence and examined the articles one by one ie., starting from entrance glass door. On the glass door upper portion there were so many prints but they were overlapped. It was not useful for comparison and in the down portion there are some prints. Out of that two chance prints were clearly visible and developed with universal or white powder and marked them A and B for the purpose of photograph. Later he entered in the cash counter, telephone, strong room, iron safe. The strong room door, besides that one another room white painted door also examined, but he could not get any clear chance prints on the above. So, after his finishing job, it was 23.00 hours and at that time, the photographer was not available with him. So, he left for his home and in the morning ie., on 05th June 1998, he brought his photographer to the bank at 08.00 hours. There was only one police constable available at the scene of occurrence. With the help of the police constable Mr.Tirumal Kumar, the Photographer of MFSL Unit, Visakhapatnam Photographed the areas that were marked. After that next day on 6th June 1998, the photographer supplied the photo copies and the police people also supplied the bank officials for comparison of elimination purpose. But, those prints did not tally with bank employees. Later on he proceeded to peruse the records which are available in his unit and found that the finger prints in store did not tally with those prints supplied by the Police. So, the prints were kept in his office for record. After two months, ie., on 30th July, he received some suspects from Malkapuram Police Station. Only two finger print slips have been received in Crime No.34/98 of

Malkapuram Police Station. He examined that finger prints slips with the available chance prints at the scene of offence. After examination with the finger print slips with chance prints, he (P.W.15) gave his opinion. The photographs of the chance prints were marked as A and B in Crime No.34/98 under section 392 of IPC of Malkapuram Police Station, Visakhapatnam City. After giving his opinion, the photo chance prints which were available in the scene of offence and which were supplied in the finger prints slips from Police Station, were enlarged for making a comparison easily with a 10 characteristic of identification marks. The charts and documents have been written by him and signed by him. The following exhibits were marked through P.W.15:-

Exhibit P-41 CNO 68/SOC/SD/VSP/98 dated 02.11.1998 being Report of the FPSI, SDFP Unit, Visakhapatnam City on the examination and comparison of photo copies of chance prints in Cr.No.34/1998, under section 392 IPC of Malkapuram Crime Police Station, Visakhapatnam.

Exhibit P-42 CNO 68/SOC/SD/VSP/City 98 dated 05.6.1998 being Report of the FPSI on the examination of scene in Cr.No.34/98.

Exhibit P-43 CNO 68/SOC/SD/VSP/98 dated 01.8.1998 being Report of the FPSI/ASI, SDFP Unit, Visakhapatnam on the examinations comparison of chance prints in Cr.NO.34/98 under section 392 IPC of Malkapuram Crime Police Station, Visakhapatnam.

Exhibit P-44 CNO 68/SOC/SD/VSP/98 dated 01.8.1998 being memorandum - Examination and comparison of photo copies in Cr.No.34/98 under section 392 IPC of Malkapuram Crime Police Station, Visakhapatnam.

Exhibit P-45 CNO 68/SOC/SD/VSP/98 dated 3.11.1998 being Memorandum - Examination and comparison of photo copies in Cr.No.34/98 under Section 392 IPC of Malkapuram Crime Police Station, Visakhapatnam - FPSI Report - Reg.

Exhibit P-46 CNO 68/SOC/SD/VSP/98 dated 24.3.1993 being Comparison Chart showing the Identical Ridge Characteristics in both Chance Print marked as A and specimen right middle finger impression marked as S1 on the finger

slip marked as S of AK Singh, S/o.Sudhama Singh of suspect concerned in Cr.No.34/98 under Section 392 of IPC of Malkapuram Police Station, Visakhapatnam.

Exhibit P-47 CNO 68/SOC/SD/VSP/98 dated 24.03.1999 being Comparison Chart showing the Identical Ridge Characteristics in both the Chance Print marked as B and specimen right index finger impression marked as S(a) on the finger slip marked as S of UK Singh, S/o.Chandrapathi Singh of suspect concerned in Cr.No.34/98 under Section 392 of IPC of Malkapuram Police Station, Visakhapatnam.

Exhibit P-47 alone relates to this accused/applicant/appellant Umesh Kumar Singh. P.W.15 in his evidence has deposed in the following lines :-

In the similar way, the chance prints developed at the scene of offence on the glass door and specimen finger prints slip of Umesh Kumar Singh of right index finger made photograph for the purpose of comparison of identical points. The chance prints marked as B and specimen right index finger prints marked S(a) are of the same pattern. On both photo copies I have drawn 10 characteristics identical points. All the abovementioned ten are characteristics which are collectively occurring in their relative position and chance prints marked B are available in their same relative position in the specimen right index finger marked S(a). Hence, I am of the opinion that the chance prints marked B is identical with the specimen right index finger impression marked S(a) and are made by the same finger of the same person, named Umesh Kumar Singh, S/o.Chandrapati Singh which are supplied by finger print slips of police station. This is report of P-47.

22. P.W.16 - Rajesh Kumar (172764-Y), LME, INS Virbahu, in his evidence would depose that the scooter bearing Registration No.AP-31-N- 5208 was purchased by him from AK Singh (accused in T.A.No.139 of 2010) and that toward price amount, he had paid Rs.3,000/- in cash in May 1997 and then gave a cheque for Rs.3,000/- on 3rd June 1997 to AK Singh. He gave another cheque for Rs.8,000/- in June 1997 to DK Singh and he gave the balance of Rs.7,000/- in cash to DK Singh on 12th July 1997. He would further admit that for the

confiscation of the scooter he had also signed in the relevant document. He identified Exhibit P-12 as his helmet.

22. P.W.17 is Shri K.Ramakrishna Rao, Inspector of Police, CCS (South), Viskhapatnam, through whom Exhibit P-48 to Exhibit P-60(d) to (e) were exhibited. Exhibit P-40(a) is the original FIR registered by Shri M.Srinivasa Rao, the then Crime Sub-Inspector of Malkapuram Crime Police Station as a case in Crime No.34/98 under Section 392, 342 IPC and Section 25 of the Indian Arms Act dated 04.06.1998. After going through Exhibit P-39 and P-40, he had proceeded with the investigation. After referring to case diary, he had submitted four cheques of SBI, Naval Base Branch, Visakhapatnam bearing cheque No.501145, 501147, 501148 and 501149 and specimen handwriting page which are taken on record as Court Exhibits and marked as Exhibits C-5 to C-9. According to P.W.17, on 30.07.1998 after arresting AK Singh and UK Singh, he had recovered a country made pistol and three cartridges under the cover of report near dolphin play ground when shown by UK Singh. Further, in pursuance of the confession statement given by AK Singh, he has also recovered another pistol, three cartridges and one orange colour plastic mask from a place behind the scooter garage near the house of DK Singh. He has also conducted the identification parade before the VI Metropolitan Magistrate, Visakhapatnam. Exhibit P-61 is the requisition letter dated 01.08.1998. Exhibit P-62 is the requisition dated 13.08.1998 addressed to VI Metropolitan Magistrate. UK Singh (present accused) has deposited an amount of Rs.81,600/- on 11.6.1998 in HSS Account No.8206 standing in his name at Central Bank of India, Azamgarh of UP State and the same was attached as per Exhibit P-52. According to P.W.17, UK Singh (accused herein) was having an HSS Account No.8206 in this branch. On 19.3.1998, he has deposited an amount of Rs.20,000/- and an amount of Rs.30,000/- into the same bank into the same account and on 11.06.1998, he has deposited an amount of Rs.81,600/-. An amount of Rs.50,500/- into this account on 19.03.1998 pertains to the share booty of another case. An amount of Rs.81,600/- which was deposited on 11.6.1998 by UK Singh in the same bank in the same account as the share booty amount received by this accused after committing the offences. After committing the crime, UK Singh (accused herein) deposited the said sum

of Rs.81,600/- on 11.06.1998 ie., six days after the date of crime and went on advance of Annual Leave of 1999 to deposit this amount. P.W.17 has further deposed that as per para 51 to Exhibit P- 59(B), the accused herein had involved in similar crimes also.

23. P.W.18 is Shri N.Dass, the Cashier, Andhra Bank Extension Counter at INS Virbahu on the date of occurrence. He corroborates the evidence of P.W.14, the then Manager of the said Bank. He has also identified the materials objects like pistol, Khukri viz., Exhibits P-15, P-20, P-21, P-22 and P-26 used by the accused and other co-accused at the time of committing the crime.

24. P.W.19 Shri S.Venkata Rao, Magisterial Clerk, speaks about Exhibit P-53, opinion of the Assistant Director, Forensic Science Laboratory, Hyderabad, which was submitted by the Inspector of CCS (South Circle) duly obtained a copy by the VIII Metropolitan Magistrate Court. He also speaks about Exhibit P-48, proceedings of the Commissioner of Police and Additional District Magistrate, Visakhapatnam City issued in his independent status vide C.No.266/NC/98 dated 09.11.1998 and signed by Commissioner of Police in his presence and he had prepared the said document as per the dictation of the Commissioner of Police. He corroborates the evidence of P.W.14.

25. P.W.20 is Lt Cdr (SDREG) YD Singh. He speaks about Exhibits P-65 to Exhibit P-69. Out of them, Exhibit P-65, P-66 and P-77 relate to the accused herein UK Singh. Exhibit P-65 is INS Circars GX NO.2266/S dated 08th July 1998 being leave genform of UK Singh RO (Spl)I. Exhibit P-66 is INS Circars GX No.3725/S dated 07th July 1998 being INS Circars genform 2725/S dated 7.7.1998 regarding reporting ex-leave of UK Singh, ROI. Exhibit P-67 is INS Circars GX No.4309/S dated PM 25h July 1998 being INS Circars genform 4309/S dated 25.07.1998 in the name of UK Singh regarding transfer to INS Satavahana. Exhibits P-68 and P-69 are relating to other co-accused.

26. P.W.21 - Shri G.Rajagopal Reddy, Assistant Director, Forensic Science Laboratory, Hyderabad, speaks about Exhibit P-53 and P-57. According to him, Exhibit P-53 was issued through VIII Metropolitan Magistrate with regard to Andhra Bank case. According to him, he has examined the arms and

ammunitions connected with this case and Exhibit P-53 is relating to that. Exhibit P-24 is the document relating to the test conducted in the Forensic Science Laboratory in respect of SBBL Pistol with a chamber of 0.303 inch calibre rifle cartridge. According to P.W.21, the said pistol is in working condition. Exhibit P-23 is the report relating to country made SBBL pistol with 0.303 inch calibre. According to P.W.21, it was not in working condition. Exhibit P-21 is the report relating to country made SBBL pistol with a chamber of 12 bore cartridges and it is also not in working condition. Exhibit P-16 is the report relating to one blank cartridge. Out of the four cartridges referred, he had test fired one cartridge and Exhibit P-16 cartridge fired well. Exhibit P-17 is the report relating to 7.62MM calibre SLR cartridges. They are intact and live but not chambering any of the fire arms. According to P.W.21, Exhibit P.17 to P.20 are prohibited calibre ammunitions.

27. P.W.22 - Shri Laxmi Narayan Patro, STD Booth Operator, INS Virbahu Shopping Complex, has identified Exhibit P-14 Scooter and it is blue metallic colour and he would state that at that time the said scooter was without number plate.

28. P.W.23 - Shri P.Krishna, Mediator, would depose that Exhibit P- 54 do not contain his signature, but he would admit that Exhibit P-70 and P- 71 contain his signature.

29. P.W.24 - Lt P.K.V.Boyiri would depose that there was no sailor borne in the name of Bir Nand, CPO (R), at the relevant point of time ie., on 15th May 1998. According to P.W.24, Exhibit P-25(B) is a fake document.

30. P.W.25 is Shri D.P.Singh, Branch Manager, State Bank of India, Barauni Refinery Township Branch, Begusarai, Bihar. P.W.25 would admit that Exhibit P-72(1) to P-72(45) are letters sent by State Bank of India, Barauni Refinery Township Branch, dated 30th October 1998. He would depose that Exhibit P-72(4) relates to the present accused UK Singh and his Account Number is No.PO2117.

31. P.W.26 - Commander-at-Arms (Retd) JA Rocque. He corroborates the evidence of P.W.14. he would state that the accused herein viz., UK Singh and other co-accused AK Singh were questioned by him on 25th July 1998 and that the present accused UK Singh was admitted in INHS Kalyani in Psychiatric Ward and he was discharged on 25th July 1998 at about 13.00 hours and thereafter he was taken in custody by the provost staff and brought to the provost office. The accused had confessed the crime. P.W.26 speaks about Exhibits P-10, P-11, P-12, P-15, P-21, P-22, P-23 and P-24 and also speaks about the currency notes recovered from the accused.

32. P.W.27 - Shri P.Srikhara Rao, VIth Metropolitan Magistrate, Visakhapatnam, speaks about the identification parade relating to this case. He would admit Exhibit P73(B) is the proceedings drafted by him. He admits Exhibit P-62, Identification parade proceedings. He admits Exhibit P-73 (7, 8 and 9) and Exhibit P-73(10).

33. P.W.28 - S. Rambabu, Mediator, speaks about Exhibit P-70 and Exhibit P-71. He admits his signature in Exhibit P-71.

34. P.W.29 - Shri Gopal Priyadarshi, Assistant, Central Bank of India, would admit that the present accused UK Singh is having an Account No.8206 in Central Bank of India, Azamgarh Branch, Uttar Pradesh and that he had deposited Rs.81,600/- in the said Account as seen from Exhibit P-72. Exhibit P-75 is the ledger folio of the Account No.8206. Exhibit C-11 is the pay-in-slip relating to Account No.8206 for the deposit of Rs.81,600/- by the accused UK Singh. He has further deposed by showing Exhibit P-75 that the said Account No.8206 was open on 19.03.1998 with a sum of Rs.500/- and thereafter, a sum of Rs.29,000/-, Rs.30,000/- were deposited subsequently and on 11.06.1998 a sum of Rs.81,600/- was deposited and the last balance in the said Account is Rs.1,32,670/- including an interest of Rs.570/-. Exhibit P-76 is the certificate issued by the Central Bank, Azamgarh, dated 07.10.1998. For Question No.2486, P.W.29 would depose that as per Exhibit C-11, pay in lip, the denomination of the cash of Rs.81,600/- deposited by the accused was, one bundle of Rs.500/- (Rs.500 X 100 = 50,000/-), 316 notes of Rs.100/- (Rs.100 X

316 = 31,600/-) total Rs.81,600/-.

35. On the basis of the above said oral and documentary evidences, the Court Martial has come to an unassailable conclusion that the charges 1, 2 and 4 against the present accused have been proved beyond any reasonable doubt and accordingly, the Court Martial has convicted and sentenced the accused to undergo 8 years RI, which has subsequently been reduced by R2 to 6 years RI, against which the present appeal has been preferred by the appellant.

36. Now the point for determination in this appeal is whether the charges levelled against the accused have been proved beyond any reasonable doubt to sustain the conviction and sentence imposed on the accused?

37. **The Point:-** As far as the Charge No.4 is concerned, it is under Section 51 of the Navy Act for having absented without leave for 334 hours, in our considered opinion, has no bearing with regard to other charges levelled against the present accused, which are relating to the charges under Section 392 IPC and Section 342 IPC read with Section 77(2) of the Navy Act. The Court Martial ought not to have clubbed the 4th charge, which is under section 51 of the Navy Act 1957, with other charges, which related to the crime, which, according to the Prosecution, had taken place on 04.06.1998 at Andhra Bank Extension Counter, INS Virbahu. So, We hold that the clubbing of 4th Charge with the other charges is illegal.

37(a) Now the point to be decided is whether the Charges 1 and 2 have been proved against the accused beyond any reasonable doubt? Out of the 29 witnesses examined in this case, P.W.2, P.W.3, P.W.12, P.W.14, P.W.15, P.W.17, P.W.18, P.W.19, P.W.21, P.W.26, P.W.27 and P.W.29 have deposed against the present accused. Out of them, the most important witness is P.W.15 through whom Exhibit P-47, finger print report relating to this accused has been exhibited. In Exhibit P-47, the report of the Finger Print Expert, after comparing the chance finger print lifted from the outer door of the Andhra Bank where the occurrence had taken place with that of the admitted finger prints of the accused sent by the Police, runs as follows:-

Comparison Chart showing the Identical Ridge Characteristics in both the Chance Print Marked B and Specimen Right Index Finger Impression marked as S(a) on the Finger Print Slip marked as S of Umesh Kumar Singh, S/o.Chandrapathi Singh of suspect concerned in Crime No.34/98 under Section 392 IPC of Malkapuram Police Station, Visakhapatnam City.

PATTERN:- The Chance Print marked B and Specimen Finger Print marked S(a) are of Twin Loop Pattern.

POINTS OF INDENTIFY:- C is Core of the Central Point of the Pattern.

Point No.1 is Ridge Bifurcation.

Point No.2 is Ridge ending below and Left to Point No.1 with Five Ridges Intervening.

Point No.3 is Ridge ending above and Right to Point No.2 with Two Ridges Intervening.

Point No.4 is Ridge ending above and Left to Point No.3 with Five Ridges Intervening.

Point No.5 is Ridge Bifurcation above to Point No.4 with Three Ridges Intervening.

Point No.6 is Ridge enclosure below and Right to Point No.5 with Six Ridges Intervening.

Point No.7 is Ridge Bifurcation below and Right to Point No.6 with No Ridges Intervening.

Point No.8 is Ridge Bifurcation below and Left to Point No.7 with Four Ridges Intervening.

Point No.9 is Ridge ending below and Right to Point No.8 with one Ridge Intervening.

Point No.10 is Ridge Bifurcation below Point No.9 with No Ridge Intervening.

All the above mentioned Ten Ridge Characteristics which are Collectively Occurring in their Relative Positions in the Chance Print marked B are available in their same relative Positions in the specimen Right Index Finger Impression marked S(a). Hence I am of the Opinion that the Chance Print marked B is Identical with the specimen Right Index Finger Impression marked S(a) and are made by the same Finger of the same person named Umesh Kumar Singh, S/o.Chandrapathi Singh.

As against this opinion of the Finger Print Expert, the accused till today has not challenged the same by way of sending the same to any other expert. So, the evidence of P.W.15 coupled with Exhibit P-47 goes to the root of the case to arrive at a conclusion that the charges under Section 392 IPC and Section 342 IPC read with Section 77(2) of the Navy Act have been proved beyond any reasonable doubt against the accused.

37(b) The other two important witnesses, the Manager of the Andhra Bank, wherein the occurrence had taken place, viz., P.W.14 and the Cashier of the Andhra Bank viz., P.W.18, have also corroborated the evidence of each other, to arrive at a conclusion that at the time of occurrence the accused had entered into the Bank along with co-accused and committed the crime. Even though there is a defence of alibi pleaded before this appellate forum, the accused has not taken any steps before the Court Martial to prove that at the time of occurrence he was out of station. The accused/appellant, relying on a Medical Board proceedings AFMSF-16A at Page 732 to Volume-II, would contend that he had undergone a medical check-up on 4th June 1998 ie., the date of alleged crime and so, he would contend that he was not the accused who had committed the crime. But, a careful scrutiny of the said Medical Board Proceedings dated 4th June 1998 in respect of the present accused will go to show that he has been exempted from doing PT Exercise, Parade and General and Night Duties. The occurrence, according to the prosecution, had taken place on 04.06.1998 at 19.20 hours. There is absolutely no material placed on the side of the accused to show that on 04.06.1998 at 19.20 hours, he was out of station. A defence which was not taken before the Trial Court cannot be put forward before this appellate forum that too without any substantial material to

prove the same.

37(c) Another legal issue raised in this application/appeal, even though not put forward in the arguments of the appellant, is that the Court Martial convened is not in conformity with the Section 97 of the Navy Act 1957 and as per Section 97(11) of the Navy Act, at least two of the Members in the Court Martial shall be drawn from two different ships, but in this case all the Members have been drawn from same ship INS Circars. But, it is seen from Vol-I of the Court Martial proceedings at page 6 that the President was drawn from INS Anjadip (Mr.Chopra Satya Pal) and the other Members viz. Raja Shekar Karri, Pisharody Vijay Kumar, Devinder Pal Singh and Sandeep Dewan have been drawn from INS Circars. Section 97(11) of the Navy Act 1957 reads as follow:-

A Court Martial shall not be deemed to be duly constituted unless the Members thereof are drawn from at least two ships not being tenders, and commanded by officers of the rank of lieutenant or higher rank.

The said provision of law does not mention that excluding the President the Members shall be drawn from two different ships. Admittedly, the President of the Court Martial was from INS Anjadip and the other Members are from INS Circars. So, the contention of the applicant/appellant that the constitution of the Court Martial is not in accordance with the provisions of law is not sustainable.

37(d) Further, it is also pertinent to note that soon after the occurrence on 04.06.1998, the accused had deposited a sum of Rs.81,600/- in Central Bank of India, Azamgarh Branch, Uttar Pradesh, in his Account No.8206. This fact has been proved by the oral evidence of P.W.29 coupled with documentary evidence of Exhibit P-72, Exhibit P-75 and Exhibit C-11, pay-in-slip, through which the accused had deposited the amount of Rs.81,600/- under his signature. There is absolutely, no material placed by the present accused to show from where he gets this amount of Rs.81,600/-. There is no documents like Promisory-Note or any lending document to show that the said amount was borrowed from third person. So, from which source the accused/appellant has got this amount of Rs.81,600/- is a mystery.

37(e) Now, We come to the point of punishment. The other coaccused Viz., A.K.Singh (Appellant in T.A.No.139 of 2010) was awarded 5 years RI, which was subsequently reduced to 2 years RI by R2. Whereas, this accused, who is also the co-accused to the same crime was awarded 8 years RI by the Court Martial, which was subsequently reduced to 6 years RI by R2. It is not known why the same yardstick which was applied to the co-accused A.K.Singh (Appellant in T.A.No.139 of 2010) was not applied to this accused. It is the admitted case of the prosecution that this accused was also under incarceration for more than 1 year 4 months after the verdict of the Court Martial. Under such circumstances, We are of the considered opinion that it is not fair on our part to send the accused behind the bars after a lapse of a decade. So, We think it is just, in the interest of justice, to apply the principles of set-off towards imprisonment in this case. Pont is answered accordingly.

38. In fine, the application/appeal is disposed of in the following terms_ While confirming the conviction, the punishment of 6 years RI awarded by the Second respondent in review alone is modified to that of the period already undergone by the accused. Bail bond as far as this case is concerned stands cancelled and the applicant/appellant is set at liberty if he is not required in any other case. The amount of Rs.81,600/- which is under the attachment is ordered to be confiscated to the Central Government. In other respects, the application/appeal is dismissed. No costs.