

Anil Kumar vs.state

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Court : Delhi

Decided On : Mar-22-2018

Appellant : Anil Kumar

Respondent : State

Advocate for Pet/Ap. : Mr. Sethi

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:
Judgment delivered on:

20. 12.2017 22 .03.2018 CRL.A. 833/2012 ANIL KUMAR Appellant Through:
Mr. Jitendra Sethi, Mr. Ambar Tewari, Mr. Hemant Gulati & Mr.Aditya Madan, Ms.
Anshika Sethi, Advocates. STATE versus Respondent Through: Mr. Rajat
Katyal, APP for the State. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P. S. TEJI

JUDGMENT

VIPIN SANGHI, J.

1. The present appeal has been preferred to assail the judgment dated 16.04.2012 whereby the learned ASJ-II (North-West) Rohini Courts in SC No.1231/2010 arising out of FIR No.153/2010, registered at PS Keshav Puram, convicted the appellant under Section 392/397/

of IPC. The trial court also found the appellant guilty of offences committed under Sections 25, 27, 54 and 59 of the Arms Act.

2. He has been sentenced vide order dated 23.11.2012 as follows: CrI. A. 833/2012 Page 1 of 35 1. The convict Anil Kumar to Rigorous Imprisonment for a period of 10 (Ten) years and fine to the tune of Rs. 5000/- for the offence under Section 392 read with 397 Indian Penal Code. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of 15 days. is sentenced 2. He is also sentenced to Rigorous Imprisonment for a period of 10 (Ten) years and fine to the tune of Rs. 500/- for the offence under Section 307 Indian Penal Code. In default of payment of fine the convict shall undergo Simple Imprisonment for a period of 15 days.

3. He is further sentenced to Rigorous Imprisonment for life with the direction that he shall not be considered for grant of remission till he undergoes an actual sentence of 20 (Twenty) years and fine for a sum of Rs. 10,000/- for the offence under Section 302 Indian Penal Code. In default of payment of fine the convict shall further undergo Simple Imprisonment for a period of one month.

4. Further the convict is sentenced to Rigorous Imprisonment for a period of Three (3) years and fine of Rs. 2,000/- for the offence under Section of Arms Act. In default of payment of fine the convict shall further undergo Simple Imprisonment for a period of one week. 3. The case of the prosecution - as noticed by the Trial Court, and which is borne out from the charge sheet is that on 10.05.2010 - DD No.15 (Ex.PW-10/A) was received at PS Keshav Puram pursuant to which SI Sanjeev Verma, PW-25 along with other police officials reached Gali No.7, Kanhaiya Nagar, Tri Nagar where Sandeep Kumar (PW-22) produced the appellant along with a pistol allegedly recovered from the appellant. It was informed by Sandeep Kumar that the appellant had fired upon one Krishan Kumar Bansal (deceased) and Nitin Bansal (PW-21) (son of the deceased) who was severely injured. The victims were brought to Maharaja CrI. A. 833/2012 Page 2 of 35 Aggarasain Hopsital. SI Sanjeev Verma after handing over the appellant and the recovered pistol to ASI Mohd. Swaley reached the hospital and obtained MLC of Krishan Kumar Bansal (Ex.PW-27/L) who was declared dead while the injured

Nitin Bansal was admitted in the operation theater.

4. SI Sanjeev Verma thereafter returned to the spot and recorded the statement of the complainant Sandeep Kumar who in his statement said that he had worked with the deceased Krishan Kumar Bansal for around 14 years in the department of Accounts at the office located at 2021/159, Ganesh Puri, Tri Nagar, Delhi. He stated that on the day of occurrence i.e. 10.05.2010 , around 11:45 am, he along with the injured Nitin Bansal went to Axis Bank, ND Block, Pitampura to withdraw a sum of 2,00,000/- and kept it in a carry bag of red and blue colour. Thereafter, on reaching their office the appellant entered the office after them, and on the point of pistol snatched the bag containing money from his hand and threatened them to stay away.

5. Thereafter, the appellant ran away and tried to start a black coloured motorcycle make Pulsar bearing No.DL8 AW455 on which the word Police was found inscribed on the front number plate. Sandeep Kumar along with both the victims ran towards the appellant and apprehended him. During the tussle that followed, the appellant managed to release his hand holding the pistol, and fired 3-4 shots towards them. In the meantime, Sandeep Kumar had already snatched the bag from the hand of the appellant. However, he got distracted as soon as he realized that one bullet had hit the right arm of Nitin Bansal, whereas another bullet hit the stomach of Krishan Kumar Bansal. Sandeep Kumar further informed the police that at this time Crl. A. 833/2012 Page 3 of 35 that the appellant ran towards Gali no.1, Kanhaiya Nagar along with the pistol, and he raised an alarm. Consequently, the appellant was apprehended by some people along with the pistol and beaten up. The deceased Krishna Kumar was taken to Maharaja Agrasen Hospital in a Santro car by one Hemant Mehra (PW-20), while the injured Nitin Bansal was taken by a PCR van to the same hospital.

6. On the basis of the said statement of Sandeep Kumar (Ex.PW-22/A), the case in hand was registered. During the course of examination the prosecution examined 27 witnesses, including public witnesses Rakesh Sharma (PW-12), Rahul Gupta (PW-19), Hemant Mehra (PW-20), Nitin Bansal (PW - 21), and Sandeep Kumar (PW - 22).

7. Rakesh Mehra (PW-12) - who is a resident of the same area, deposed that on 10.05.2010 around 12.00(cid:173)12.15 pm he was passing through the area when he found many persons gathered in the street and also found a person in an injured condition. He stated that on coming closer he found that some person had caused injuries by bullet to Krishan Kumar Bansal and his son Nitin Kumar Bansal. He subsequently made a PCR call on the number 100 from his mobile bearing No.9136244442 and left the spot.

8. During cross-examination, PW-12 deposed that on his way home he saw a crowd and hence proceeded to the place of incident. He further stated that his statement was recorded after two-three days of the incident when he was called in the police post Shanti Nagar.

9. PW-19 Rahul Gupta was also a public witness. He stated that he was running a readymade garments shop in the area. He stated that he could identify the victims as they were his regular customers. He too made a call to the PCR from his mobile bearing No.9811520510. He identified the appellant in court as the person beaten up by the public, and handed over to the police. He further deposed to having witnessed the appellant commit the offence.

10. During cross-examination, PW-19 stated that he did not know the accused prior to the incident. He denied that the accused was shown to him outside the Court by the Investigating officer and it was for this reason he had identified him in the Court. He further deposed that he had seen the accused at the spot committing the offence and it was for this reason he could identify him. He further stated that the accused was apprehended by the public near Gali No.1, Kanhiya Nagar, Tri Nagar, Delhi. Further, his statement was recorded at noon time after two days. He further deposed that there was a crowd of around 100-150 public persons at the spot. He further deposed that the public ran behind the accused till Gali No.1, where he was apprehended. He further deposed that he did not go to Gali No.1 - where the accused was apprehended by public persons, and stated that he had only seen the accused at the place of the incident.

11. He denied that the public persons had apprehended some other person who was released by the police. He further denied that the accused was lifted from his

office and falsely implicated in the present case on account of his animosity with one SI Jagdish Dahiya - posted at Police Station Rohini, and one Subhash - posted at Police Station Keshav Puram. He also denied that the accused was not involved in the incident and he had wrongly identified him at the instance of the local police. Crl. A. 833/2012 Page 5 of 35 12. Public witness, PW-20 Hemant Mehra, also a resident of that area, running a business of computer hardware, deposed that on 10.05.2010 while coming out of his house, he heard the sound of a fire shot. Consequently, he rushed towards the spot and found the appellant running with a pistol in his hand. He noticed Nitin Bansal suffer a bullet wound on his hand, whereas Krishan Bansal suffered a bullet shot to his stomach. He further stated that Krishan Bansal, Nitin Bansal and Sandeep Kumar informed him that the person who was running from there had fired bullet shots on them. He further testified that he immediately brought his Santro Car and took Krishan Bansal to Maharaja Agrasen Hospital. According to him, the PCR van also came there which took Nitin Bansal to Maharaja Agrasen Hospital. During the recording of his testimony in court, PW-20 correctly identified the appellant as the person running away from the place of incidence.

13. During cross-examination, PW-20 deposed that the accused was not known to him and he had never seen the accused in the area previously. He further stated that he did not follow the accused since he felt that it was his duty to first rush the injured to the hospital. He stated that both the injured were bleeding and, apart from blood, some liquid and bubbles were also coming out from the injury of Krishan Kumar Bansal who had been hit on the stomach. He stated that he had physically lifted the injured into his car and some blood had come on his clothes during this process, but the police did not seize the said clothes nor did they ask him to hand over the same. He further stated that there was not much blood which had come on the car when he took the injured to the hospital and added that more of the liquid Crl. A. 833/2012 Page 6 of 35 and air bubbles were coming out from the injury of Krishan Kumar Bansal, than blood.

14. He further deposed that he had informed the PCR officials that he was shifting the injured to Maharaja Agrasen Hospital. He deposed that after the incident a large number of public persons had gathered at the spot. He testified that due to

this large gathering in the Gali it became difficult for him to move his car out of the area. He further stated that Nitin was brought to the hospital by a police official. He deposed that it took him about half an hour to reach Maharaja Agrasen Hospital and he reached at about 11:45- 12:00 noon. He stated that his statement was recorded on 11.05.2010 at the police chowki.

15. He stated that he had only seen the accused running with the pistol in his hand. He stated that he had not seen the accused actually firing upon the injured Nitin Bansal and the deceased Krishan Kumar Bansal. The accused had already fired by that time. He further deposed that he saw the face of the accused, when he was at a distance of about 20 steps away only once, as he had turned around to see if anybody was following him.

16. He denied that the accused had been shown to him outside the Court and that he had identified him on the pointing out of the Investigating Officer. He further denied that he had never seen the face of the accused, or that he was not present at the time of incident and came out of his house much later after the entire incident was over, only to shift the injured to the hospital. CrI. A. 833/2012 Page 7 of 35 17. PW-21 Nitin Bansal, who is the son of the deceased, correctly identified the appellant in Court while his testimony was being recorded. He deposed that on the day of the incident i.e. 10.05.2010, he along with PW-22 went to Axis Bank, ND Block, Pitampura, Delhi, to withdraw money. He stated that he had withdrawn an amount of 2,00,000/- from the bank and was already carrying the sum of 50,000/-. He further stated that the total amount of 2,50,000/- was kept in a bag and he proceeded towards his office. He further deposed that at about 11:45 AM when they entered their office - where his father Krishan Kumar Bansal (deceased) was already present, the appellant while holding a pistol came into their office and pointed the said pistol at them. The appellant snatched the bag containing the money from the hand of PW-22, and threatened and asked them to stay inside the office premises. He further deposed that they ran behind the appellant and found that he was trying to start a pulsar motorcycle bearing No.DL8 AW455 He stated that he caught the hand of the appellant in which he was holding the pistol, while PW-22 Sandeep Kumar caught the bag, and the father of PW-21 - Krishan Kumar Bansal (deceased) caught him from behind, on which the appellant

threatened to let him free else he would fire. He further stated that the appellant succeeded in freeing his hand and fired two(cid:173)three times, as a result of which one bullet hit him on the right arm and the other bullet hit his father in the stomach. He further deposed that PW-22 had by then snatched the bag off the appellant, and seeing no option the appellant left the motorcycle at the spot and tried to escape. PW-21 states that they raised an alarm and some public persons overpowered him at some distance. He stated that PW - 20 took his father to Maharaja Aggarsen Hospital in his Santro car and the PCR van took him to the same Hospital. Crl. A. 833/2012 Page 8 of 35 18. In his cross-examination, PW-21 deposed that the accused had never come to their office previously, and the date of the incident was the first time that they had seen the accused. He stated that he did not help his father when he was shot, or follow the accused because he was himself injured with the pistol shot injury. He deposed that the accused was apprehended by some public persons at a distance of about 20-30 feet. He further deposed that the PCR came to the spot only after about half an hour to 45 minutes. Therefore, he was shifted to a doctor's clinic located nearby by some public persons. He stated that he was taken to the hospital only after the PCR van arrived. He deposed that he did not tell the Investigating Officer that he was first taken to the local doctor by the public persons since the doctor did not give him any treatment. He further deposed that his statement was recorded in the hospital at about 10:00-10:30 the next morning, since he was under treatment and had been operated upon, and was declared fit for statement on the next morning only.

19. He further stated that when the accused had come to their office, he was wearing a helmet and that the helmet came out in the scuffle which followed when they tried to resist and snatch their money bag back. He denied that the person, who had committed the robbery and was wearing a helmet, had run away from the spot and the accused has been falsely implicated. He further denied that he had never seen the face of the accused as he was wearing a helmet. He further denied that the Investigating Officer had shown him the photographs of the accused later, or that he had deposed falsely at the instance of the Investigating Officer. Crl. A. 833/2012 Page 9 of 35 20. PW - 22 Sandeep Kumar is the person on whose statement the FIR was registered. During his examination he stated that on the day of the incident i.e. 10.05.2010 he along with the injured Nitin Bansal had gone

to Axis Bank, ND Block, Pitam Pura on his two wheeler scooter to withdraw money. He further deposed that Nitin Bansal had withdrawn Rs.2,00,000/- from the bank and was already in possession of the amount of Rs.50,000/- after which Nitin Bansal kept the amount of Rs.2,50,000/- in a carry bag of red and blue colour. According to him, as soon as they entered their office, the accused entered their office with a pistol in his hand and snatched the bag from his hand on the point of pistol.

21. He further deposed that the accused threatened them to keep away otherwise he would kill them. He further stated that the accused, thereafter, shut the door of the office and ran towards his pulsar motorcycle but they pushed the door and came outside and ran towards the accused who was trying to start his motorcycle bearing No.DL8 AW455 which he could not start. He stated that the witness the word Police was printed on the front number plate of the motorcycle.

22. He deposed that Nitin Bansal caught held of the hand of the accused in which he was holding the pistol, whereas he snatched the bag from his hand, and the deceased - Krishan Bansal held the accused from the back. He further stated that the accused succeeded in releasing his hand from Nitin Bansal and fired two-three times during which one bullet hit on the right arm of Nitin Bansal and one bullet hit in the stomach of his father Krishan Kumar Bansal; blood started oozing from the right arm of Nitin Bansal and CrI. A. 833/2012 Page 10 of 35 the stomach of Krishan Kumar Bansal. He deposed that, thereafter, his attention got diverted towards Krishan Kumar Bansal and Nitin Bansal.

23. He deposed that the accused started running towards Gali no.1, Kanhaiya Nagar along with the pistol. He raised an alarm by saying Pakro - Pakro after which some public persons came and apprehended the accused and started beating him. He further deposed that Hemant Mehra PW-20 reached the spot and took Krishan Kumar Bansal to Maharaja Aggarsen Hospital in his Santro Car and after some time a PCR Van also came there which took Nitin Bansal to the same hospital and his statement was recorded by the Investigating Officer SI Sanjeev Verma.

24. PW - 22 further deposed that he handed over the pistol snatched by him from the hands of the accused Anil Kumar to SI Sanjeev Verma who examined the pistol and found it to contain four live cartridges in the magazine and one live cartridge in the chamber. He deposed that SI Sanjeev Verma prepared the sketch of the pistol and cartridge which was recovered and that after measuring the pistol and cartridges, the same were wrapped in a cloth and taken into possession. He further testified that SI Sanjeev Verma filled in the form of CFSL and at the same time Inspector Ashok Kumar had also come to the spot who prepared the site plan at his instance. He deposed that the accused Anil Kumar was interrogated, arrested and personally searched during which Rs.210/, one mobile phone make Nokia and one silver coloured Kara (Ring) were recovered.

25. He further deposed that he again joined the investigations with IO Ashok Kumar and handed over one carry bag i.e. one red and blue colour Crl. A. 833/2012 Page 11 of 35 bag with the words With Best Complements PLOP written on the same, in which they had brought the money from the bank, which was snatched by the accused.

26. During his cross-examination, PW-22 stated that he saw the accused only when the accused snatched the bag from his hand. He further deposed that the distance between the motorcycle and their office was about seven to eight paces and they got scared on seeing the pistol in the hand of accused. Therefore, after snatching the bag they immediately shouted Oye Oye.

27. He stated that the scuffle with the accused lasted for about two-three minutes. He further deposed that he remained with the injured Krishan Kumar Bansal and Nitin Kumar Bansal, but did not follow the accused. He testified that the accused was overpowered by the public persons at a distance of about 25-30 yards from the office. He further stated that the accused was not brought back to the place where his motorcycle was parked but was kept at the same place where the accused was apprehended.

28. He further deposed that he did not go to the hospital with Krishan Kumar Bansal or Nitin Bansal and remained at the spot itself, where his statement was recorded by SI Sanjeev Verma. He further testified that he saw the face of the

accused after he reached the spot where the accused was apprehended. He further deposed that the helmet of the accused came off during the scuffle. He further stated that he had no knowledge of the whereabouts of the helmet. He denied that he had never seen the face of the assailant, or that the assailant had run away from the spot, and the accused had been falsely implicated. Crl. A. 833/2012 Page 12 of 35 29. The Appellant, in his statement under Section 313 Code of Criminal Procedure denied all the evidences put forth before him. He stated that he had been falsely implicated in the case since he had differences with one SI Jagdish Dahiya - posted at Police Station Rohini and one Subhash - posted at Police Station Keshav Puram. He further stated that he was forcibly taken from his office by the police officials due to which he sustained injuries. In his defence the appellant examined two witnesses - Ashok Kumar (DW-1) and Rajpal (DW-2).

30. During examination, DW - 1 deposed that he was working as a Training Supervisor in Hans Security Services, at House No.154, Sector 2, Mangolpur Kalan, Delhi and his duty hours were 10 AM to 7 PM. He stated that on 10.05.2010, while he was at his office some police officials came in around 5:30 PM and took their Managing Director, the appellant, Anil Kumar with them for some inquiries. He stated that it was only on the next morning that he found out that the police had falsely implicated the appellant in a murder case. He testified that the appellant was present in the premises of his office on 10.05.2010 until 5:30 PM when the police officials came.

31. DW - 2 made a similar statement that on 10.05.2010 while he was working at Hans Security Services, where the appellant was already present, some police officials came in around 5:00(cid:173)5:30 PM and took the appellant away with them. He further stated that he too found out only on the next day that the appellant had been falsely implicated. Crl. A. 833/2012 Page 13 of 35 32. After considering the testimony of the prosecution and defence witnesses, and other evidence on record, the learned Trial Court held the Appellant guilty of offences under Section 392 r/w 397 Indian Penal Code for having committed robbery of Rs.2,50,000/(cid:173) on the point of pistol; under Section 307 Indian Penal Code for having caused grievous injuries upon Nitin Bansal with such intention and

knowledge and under such circumstances that if by that act he caused the death of Nitin Bansal, he would have been guilty of murder; under Section 302 Indian Penal Code for having committed the murder of Krishan Kumar Bansal; and under Sections 25/27/

of Arms Act for having been found in possession of pistol containing one live cartridge and also having used the same. Arguments of the Appellant 33. Mr. Sethi, learned counsel for the appellant, has challenged the conviction on mainly the following grounds: (i) Even though PW-21 Nitin Bansal had received injuries at about 11:45 am, he only managed to reach the hospital at about 12:45 pm, which is around one hour post the time of the incident. Further, no credible evidence and explanation has been shown to justify the delay of one hour; (ii) The statement that an amount of Rs. 2,50,000/- was withdrawn from the Axis Bank account has been denied by the Manager of the Bank. Further, none of the police officers had made a statement that the appellant made an attempt to rob Rs. 2,50,000/- from the victims. The amount of Rs. 2,50,000/- was CrI. A. 833/2012 Page 14 of 35 not shown to be recovered or handed over to the police except the red color bag; (iii) No blood stains were recovered from the clothes or the car of PW-20 Hemant Mehra, hence, making the story false. Statement of PW-20 shows that he had carried only the deceased Krishan Kumar Bansal to the hospital. Thus, the name of PW-20 on the MLC of the injured Nitin Bansal shows that the document, i.e. MLC of Nitin Bansal is false and fabricated; (iv) No burn injuries were caused either on the clothes or the skin of both the injured and the deceased by the bullets alleged to be fired by the appellant; (v) The assailant was wearing a helmet at the time of the incident but the same was not found. Further, the identity of the assailant could not have been established since he was wearing the helmet. Furthermore, the personal search memo has revealed that no driving license was recovered from the possession of the appellant thus it cannot be established that he was driving a motorcycle; (vi) There are material discrepancies in the testimonies of the eye witnesses with regard to the time and place of occurrence of the incident. CrI. A. 833/2012 Page 15 of 35 (vii) The locations at which the fired bullets were recovered belie the story of the prosecution.

34. Learned counsel for the appellant has, thus, contended that no case is made out against the appellant under Sections 392/397/

of IPC and Sections 25, 27, 54 and 59 of the Arms Act. Arguments of the State 35. It was the case of the prosecution that the motorcycle used by the appellant to commit the offence was a stolen property, and the theft was recorded FIR No.138/2010 registered at PS South Rohini (Ex.PW-8/A). The prosecution led PW-8 HC Jagdish Chand to establish that the correct registration number of the stolen motorcycle was DL-4S-AY-5455 and not DL-4S-AS-455.

36. The prosecution also placed reliance on the PCR details of the date of the incident i.e. 10.05.2010. Numerous calls were made and recorded by the PCR staff. The same are exhibited as Ex.PW18/A, Ex.PW18/B and Ex.PW18/C as proved by PW-18 HC Dharamveer in his testimony. There are several independent public eye-witnesses to the incident, as they were present at the spot, and they are reliable and credible. Their testimonies have not been denied in their cross-examination.

37. Mr. Katyal, the learned APP refers to the testimony of PW-1, Dr. V.K. Jha, who conducted the postmortem on the dead body of the deceased - Krishan Kumar Bansal. PW-1 in his deposition has stated that the range of fire arms was near range beyond the flame effect but within the CrI. A. 833/2012 Page 16 of 35 powdering range. Hence, there was no flame effect or burning on the clothes of the victims.

38. Mr. Katyal also places reliance upon the testimonies of PW17 L. Babyto Devi, Senior Scientific Officer, FSL Rohini & PW23 Puneet Puri, Senior Scientific Officer-cum-Ex-Officio Chemical Examiner GNCTD FSL Rohini. The forensic evidence corroborates the testimonies of the eye witnesses with regard to the use of the recovered fire arm for commission of the offences in question. Discussions and Decision 39. We have heard the submissions of learned counsels and carefully perused the record. We now proceed to deal with the contentions advanced by the learned counsels.

40. The first submission advanced by the learned counsel for the appellant is that PW-21 reached the hospital after an inordinate delay of about one hour, post the incident. He places reliance on the MLC of PW-21, wherein the time of arrival has been recorded as 12:45 PM. A perusal of the cross-examination of PW-21 reveals

that the PCR van in which he was brought to the hospital arrived at the scene of crime only after about 30-45 minutes post the time of the incident. Meanwhile, he was shifted to a nearby clinic by certain public persons. Further, PCR call at 12:30:52 pm from PCR Van C17 recorded that Jis larke ko goli lagi hai Yadav clinic se uske parents Aggarsain hospital le jana chahte hai, injured ko hospital le jaa rahe hai. Thus, PW-21 Nitin Bansal who was injured on account of gun-shot had been shifted to Maharaja Aggarsain Hospital from Yadav Clinic where he was initially taken. We, thus, find no merit in this argument advanced by the learned counsel for the appellant. There was no inordinate delay, and the so-called delay stands sufficiently and convincingly explained.

41. Learned counsel for the appellant has submitted that PW-21 had not withdrawn Rs. 2.50 lakhs from Axis Bank. The withdrawal of money on 10.05.2010 had been denied by the manager of the Axis Bank. Ajesh Gupta (PW11) Deputy Manager, Axis Bank in his testimony has stated in reply to the notice dated 06.07.2010 sent by police officials that Further, no transaction of the said amount of Rs. 2,50,000/- is appearing in the account on 10.05.10. However, in the enclosed certified copy of the account statements of the deceased Krishan Kumar Bansal (Ex.PW-11/A), the withdrawal of a sum of Rs. 2,00,000/- on 10.05.2010 is reflected from the bank from account bearing No.040010100363471. Thus, this documentary evidence corroborates the oral testimony of Nitin Bansal (PW-21) and Sandeep Kumar (PW-22) in which they have stated that the sum of Rs. 50,000/- was already in their possession, and only a sum of Rs. 2,00,000/- was withdrawn from the bank on 10.05.2010.

42. Learned counsel for the appellant has further submitted that the amount of Rs. 2,50,000/- was never recovered from the appellant, nor any cash amount has been shown to be handed over to the police except one red color bag in which the amount was kept.

43. We do not find any merit in this submission, for the reason that the money was not recovered from the accused. It has come in evidence that during the scuffle, the bag containing the money was snatched back from the

18 of 35 accused by Sandeep Kumar PW-22. It was a case of failed robbery, since the robbery did not succeed. The money was, therefore, rightly not made case property. It has come in the testimony of Nitin Bansal PW-21 that the money was used in the treatment of Nitin Bansal and towards the last rites of the deceased Krishan Kumar Bansal. The medical bills placed on record by the prosecution clearly show that the amount of Rs.2,03,435/- was used for the treatment of Nitin Bansal vide Ex.21/A. The rest of the amount was used to perform the last rites of the deceased, Krishan Kumar Bansal.

44. The submission of Mr. Sethi that non-recovery of blood stains from the clothes, or the car of PW-20 Hemant Mehra, discredits his entire statement, and makes PW-20 a false witness, has no merit. He has further contended that the statement of PW-20 shows that he had carried only the deceased Krishan Kumar Bansal to the hospital. However, the name of PW- 20 is also found on the MLC of the injured Nitin Bansal. This belies the story of the prosecution.

45. The learned ASJ has adequately dealt with this submission of the appellant in the impugned judgment. Since we accept the reasoning of the trial court, we would like to reproduce the observations made by the trial court on the said aspects. The same read as follows: 71 I have considered the submissions made and I may observe that Firstly the witness Hemant Mehra has explained that there was not much blood coming out from the wounds of the injured and in fact there was liquid and bubbles oozing out from the wound which explained why his clothes were not soiled. Secondly the the MLC of the deceased Krishan Kumar Bansal which is Ex.PW27/L proves that he had been brought to Maharaja Aggarsain Hospital by Hemant Mehra. In CrI. A. 833/2012 Page 19 of 35 fact Hemant Mehra (PW20) has also explained that Nitin Bansal had been brought to the hospital later on by the PCR. He has proved that PCR officials came to the spot when he was in the process of shifting the injured to the hospital and therefore when the PCR brought Nitin Bansal to Maharaja Aggarsain Hospital it was he who had given the details to the hospital. The presence of Hemant Mehra (PW20) is also reflected from the MLC of Nitin Bansal which is Ex.PW2/A. Lastly the Postmortem Report Ex.PW1/A of Krishan Kumar Bansal proves that the gun shot injury received by the deceased was on spinal cord i.e. Lumber 4 and 5 and he died on account of spinal shock as

a result of bullet injuries consequent to fracture Lumber4 and 5 vertebrae which explains why there was less blood and more of the liquid fluid oozing out from the wound of the deceased. 46. In his statement, as well as cross- examination recorded by the Ld. Trial Court, PW-20 Hemant Mehra has testified that the place of the incident was hardly about 50- 60 steps away from his house No.3833/ 7. He has stated that he felt it was his duty to take the injured to the hospital, since both the injured had received gunshot injuries. Thus, he chose not to follow the accused. He further stated that he had carried Krishan Kumar Bansal (deceased) in his car and thereafter shifted him to Maharaja Aggarsain Hospital. He further testified that he reached Maharaja Aggarsain Hospital after about half an hour, since a huge crowd had gathered in that gali and he found it difficult to move his car out of the area.

47. PW-20 has in his examination-in-chief as well as cross-examination testified that there was more liquid and bubbles coming out from the injury of the deceased - who had been hit on the stomach. Consequently, not much blood had come on the car. He further stated that some blood had also come on his clothes but the same were not seized by the police officials. Further, CrI. A. 833/2012 Page 20 of 35 PW-20 was in the process of shifting the injured inside the hospital when the PCR arrived with the injured PW- 21 Nitin Bansal. It was PW-20 who had given all the personal details of PW-21 at the time of his MLC and, therefore, the presence of the name of PW-20 on the MLC of PW-21 - when the latter had been brought to the hospital in a PCR van, stands justified.

48. We find no reason to disbelieve PW-20, who is an independent public witness, since, he did not know the accused or had any animosity with him. His testimony displays natural course of conduct on his part. Non seizure of his stained clothes, or the seat cover of his car - which too may have got stained is not fatal to the case of the prosecution in the face of such overwhelming eye witness account brought on record. The statement of PW-20 is corroborated by the other prosecution eye witnesses and by the documents prepared at the hospital in relation to the deceased and the injured Nitin Bansal.

49. Mr. Sethi has further contended that no burn injuries were caused either on the clothes or the skin of both the injured and the deceased by the bullets alleged to have been fired by the appellant. PW-1, Dr. V.K. Jha, who conducted the postmortem of the dead body of the deceased - Krishan Kumar Bansal, in his testimony stated that the cause of death of Krishan Kumar Bansal was spinal shock as a result of bullet injuries consequent to fracture Lumber 4 and 5 vertebrae. He further testified that the firearm injury was sufficient to cause death in ordinary course of nature. Furthermore, he deposed that the range of firearm was near range beyond the flame effect but within the powdering range. CrI. A. 833/2012 Page 21 of 35 50. The opinion of the medical officer is corroborated by the testimonies of the eye-witnesses, who stated that the bullets were fired from a close range. Hence, there was no possibility of a flame effect or burn injuries on the clothes or skin of the victims. This contention of the appellant is, therefore, rejected.

51. Learned counsel for the appellant has contended that even as per the testimonies of the eye witnesses, the assailant was wearing a helmet at the time of the incident. He submits that, thus, it was not possible for the assailants identity to be established. He has further contended that no helmet was found from the place of the incident, thus, belying the testimonies of the public witnesses.

52. Learned trial court while dealing with this submission before it has observed as follows: 76.I have considered the submissions made before me. At the very outset I may observe that in so far as the aspect of the witness not having seen the accused is concerned, it is unbelievable because the witness has repeatedly asserted that there was a scuffle when the accused had snatched the bag from his hand on the point of pistol but thereafter the injured Nitin Bansal caught hold the hand of the accused in which he was having the pistol whereas he (witness) snatched the bag from the hand of the accused and Krishan Kumar Bansal also apprehended the accused from the back side but the accused succeeded in releasing his hand from Nitin Bansal and fired two to three times on which one bullet hit on the right arm of Nitin Bansal and other bullet hit in the stomach of Krishan Kumar Bansal on which blood started oozing out from right arm of Nitin Bansal and the stomach of Krishan Kumar Bansal. The victim Nitin

Bansal and witness Sandeep have explained that it was during this scuffle that the helmet of the accused Crl. A. 833/2012 Page 22 of 35 to had come off. The witness Sandeep has specifically explained that on this his attention was diverted and the accused started running away towards gali no.1 Kanhaiya Nagar along with pistol. He has specifically stated that he had seen the accused when he snatched the bag from his hand and immediately did not raise an alarm because they were shocked and initially no public persons came their rescue as nobody could understand as to what had happened and the whole incident took place within two-three minutes. The witnesses Rahul Gupta and Hemant Mehra who had witnessed the firing of shots and seen the accused running along with a pistol in his hand, with public chasing him after which he was apprehended, have also specifically explained the above sequence. Further, the witness Sandeep Kumar has proved that it was he who had taken the pistol from the hand of the accused which he later handed over to the police. Merely because the police has failed to recover or seize the helmet in question, cannot be a ground to disbelieve the witness. It has come on record that a large number of public persons had gathered in the street in hundreds and the entire attention of the eye witnesses was on the injured and in rushing the injured to the hospital in an attempt to save their lives. Therefore, the possibility of the helmet not being noticed or being picked up by some public person who walked away with it, cannot be ruled out. Therefore, non recovery of the helmet will not be fatal to the case of the prosecution. (emphasis supplied) 53. We find ourselves in complete agreement with the findings and reasoning returned by the learned ASJ on the above aspect. It has been fairly established that during the tussle, the helmet of the appellant came off and, therefore, the public witnesses could see the face of the appellant. The non-recovery of the helmet - which came off on a public street, in the face of such a major incident does not dent the case of the prosecution. The focus of the witnesses and the public that had gathered, obviously, would have been incident; the injured, and; the apprehension of the accused, and not the Crl. A. 833/2012 Page 23 of 35 recovery of the helmet of the accused. The possibility of someone picking it up and keeping it - since it lay unclaimed (as the accused was apprehended and handed over to the police), cannot be ruled out.

54. As far as the credibility and reliability of the witnesses produced by the defence is concerned, the learned trial court has found the same to be untrustworthy, as no documentary proof was placed on record by the defence witnesses to prove that they were employees of the appellants. The learned trial court while finding the claim of the appellant and the witnesses produced false, observed as follows: 93. I may observe that both the witnesses are highly untrustworthy. They have not been able to produce any documentary record to prove that they were the employees of Anil Kumar. Further, this claim of the accused Anil Kumar and the defence witnesses that Anil Kumar was present in his office at House No.154, Sector 2, Mangolpur Kalan, Delhi on 10.5.2010 and lifted by the police at 5:30 PM stand falsified on three counts. Firstly the record of the Police Control Room in the form of PCR forms Ex.PW18/A, PW18/B and Ex.PW18/C as discussed herein above, which is an official record being maintained in the ordinary course of business proved by HC Dharamveer (PW18) and presumed to be correct and has not been duly controverted establishes that on 10.5.2010 at 12:26:59 when the PCR Van C(cid:173)16 reached the spot the accused had already been apprehended by the public persons along with pistol; at 12:37:58 he disclosed his name as Anil Kumar S/o Roshan Lal R/o Bahadurgarh, Haryana and at 12:23:49 information was received from PCR Van T(cid:173)53 that the weapon which was used by Anil Kumar was a Chinese pistol. Secondly the MLC of the accused Anil Kumar dated 10.5.2010 which is Ex.PW27/K establishes that he was taken to BJRM hospital at about 3:30 PM for his medical examination with the alleged history of being beaten by public persons where he was treated Crl. A. 833/2012 Page 24 of 35 by Dt. Sumit Arora and Dr. Anil after which the accused Anil Kumar was taken to the FSL Rohini where swabs of both his hands were taken. This out rightly defeats the claim of the accused Anil that he was lifted at 5:30 PM and falsely implicated after the actual person was left. Lastly all the independent eye witnesses who were public persons and had personally witnessed the incident, have identified the accused Anil Kumar as the assailant and the person who had been caught at the spot and there being no history of animosity, there is no reason why they would have falsely implicated the accused. In view of the aforesaid, I hereby hold that the entire defence of the accused is sham and hereby rejected. 55. We find no reason to take a different view than that of the learned ASJ.

The identity of the appellant was established beyond all reasonable doubt. We find it highly unbelievable that the appellant was present in his office premises at the time of the incident. The appellant was apprehended by many public persons. Public witnesses have identified him as the one who fired bullets at the deceased Krishna Kumar Bansal and injured Nitin Bansal. It has also been proved by the prosecution witnesses that the appellant was the person running away from the spot with a pistol in his hand. His defence that he was picked up from his office on 10.05.2010 at 05:30 p.m. is belied by the fact that the contemporaneous PCR record, as well as the MLC of the appellant show that he was apprehended from the spot of the incident and taken to the hospital for his medical examination. Pertinently, in the PCR record, one of the entries recorded at 12:37:58 (from PCR Van C16) is that the identity of the assailant is Anil S/o Roshan Lal, Age 27 years, R/o Gali No.1, Patel Nagar, Bahadurgarh, Haryana. Even the make of the pistol used as Chinese is recorded at 12:39:49 from PCR Van T53. The aforesaid is a contemporaneous record. The name and particulars CrI. A. 833/2012 Page 25 of 35 of the assailant and the make of the pistol used by him could not have been imagined at the spur of the moment. They were disclosed by the appellant upon his apprehension. We therefore find no reason to believe the testimonies of the defence witnesses.

56. The firearm used in the crime has been connected to the crime. The forensic evidence also establishes the use of the same by the appellant. The learned court has marshaled the said evidence in the following manner: 88. After the recovery of the pistol the same had been sent to FSL Rohini for examination along with the cartridges and cartridge cases and one metallic piece recovered from the body of the deceased at the time of postmortem. Sh. Puneet Puri (PW23), Senior Scientific Officer has proved the Ballistic Report which is Ex.PW23/A and has proved that the pistol (Ex.P2) was the same which had been examined by him as F1 and the cartridges (Ex.P3) were the same which had been sent to him for examination. He has also identified the test fired bullets and the cartridges which were sent to him for examination and the test fired cartridges. The witness has further proved that the improvised pistol was a firearm and the cartridges, cartridge cases, fragment of jacket of bullet and bullet were ammunition as defined in Arms Act. He has conclusively proved that the cartridge cases which had been recovered from the

pistol Ex.P3 had been fired through the improvised pistol Ex.P2 which he has opined since the individual characteristics of firing pin marks and breech face marks present on the said cartridges were found identical when compared with the test fire cartridges under microscope examination.

89. Further, the ballistic report in respect of the swabs of the accused which report is Ex.PW23/B shows that gunshot residue particles (GSR) were detected around the hole on the half sleeves shirt marked exhibit 'C2' (belonging to the CrI. A. 833/2012 Page 26 of 35 injured Nitin Bansal). However, no opinion could be given on the swabs due to insufficient data.

90. Therefore, under these circumstances, I hereby hold that the prosecution has been able to establish that two bullets had been fired from the pistol snatched from the hand of the accused Anil Kumar by Sandeep Kumar.

91. Further, as per the FSL reports which are Ex.PW17/A & Ex.PW17/B show that human blood of 'B' Group was detected on gauze cloth piece exhibit 2 (lifted from the spot); human blood of 'AB' Group was detected on gauze cloth piece exhibit 3 (lifted from the back tyre of motorcycle); human blood was detected on cemented piece exhibit 4 (blood stained earth); blood was detected on control cemented piece exhibit 5 (earth control); human blood was detected on shirt exhibit 12 (shirt of accused Anil Kumar); human blood of 'AB' Group was detected on Baniyan exhibit 13a (Baniyan of injured Nitin Bansal); human blood of 'AB' Group was detected on shirt exhibit 13b (shirt of injured Nitin Bansal); human blood of 'AB' Group was detected on pants exhibit 13c (pants of injured Nitin Bansal); human blood of 'AB' Group was detected on handkerchief exhibit 13d (belonging to injured Nitin); human blood of 'B' Group was detected on Baniyan exhibit 14a (belonging to deceased Krishan Kumar); human blood of 'B' Group was detected on pant exhibit 14c (belonging to deceased Krishan Kumar); human blood was detected on shirt exhibit 14d (belonging to deceased Krishan Kumar) and human blood of 'B' Group was detected on gauze cloth piece exhibit 15 (blood sample belonging to deceased Krishan Kumar). It therefore stands established that the blood group of deceased Krishan Kumar Bansal was of 'B' Group and of the injured Nitin Bansal was of 'AB' Group. The presence of the blood groups

belonging to the injured and the deceased on the various exhibits lifted from the spot conclusively establishes that the incident had taken place at the spot from where the exhibits were the forensic evidence lifted. I hereby hold that CrI. A. 833/2012 Page 27 of 35 corroborates the oral testimonies of the various eye witnesses and injured. (emphasis supplied) 57. We agree with the above findings, and no argument has been advanced by learned counsel for the appellant to persuade us to take a different view. Thus, it is fairly established by the testimony of PW- 23 Puneet Puri that the death of Krishan Kumar Bansal and the injury of Nitin Bansal was a result of the bullets fired upon them by the appellant by use of the same firearm which was recovered. The bullet recovered from the seized pistol and that retrieved from the body of the deceased are of the same origin and fired from the seized pistol, as established by the ballistic reports led in evidence by the prosecution.

58. Mr. Sethi has laid much emphasis on the point that the places at which the pellets/ empty case of the fire bullets were found, renders the case of the prosecution doubtful. He has drawn our attention to Ex. PW-6/A, which is the site plan prepared to scale. He submits that one pellet was found just outside the staircase of the premises where the accounts office of Krishan Kumar Bansal was located. The same is shown as Point-B in Ex. PW-6/A. At Point-C, which is at a distance of 655 cms i.e. 6.55 mtrs from Point-B towards Gali No.7/pucca road side, an empty case was found. Point-D in Gali No.7/pucca road side is the point where Sandeep Kumar, Nitin Kumar Bansal and Krishan Kumar Bansal overpowered the accused when he was trying to start his motorcycle, and where he fired upon Nitin Kumar and Krishan Kumar Bansal, and injured them. Around this point, blood was found at the spot. Point-H, which is at a distance of about 800 cms i.e. 80 CrI. A. 833/2012 Page 28 of 35 mtrs from the place where the motorcycle was parked (which is marked as Point-E in the site plan), is the point where the empty case was found.

59. The submission of Mr. Sethi is that the location of the pellets and the empty cases belies the story of the prosecution. He particularly emphasizes that the pellet could not have been recovered from Point-B, as it is not explained as to how the same reached Point-B, i.e. outside the staircase of the office premises of the

deceased/ injured, if it was fired at Point-D, which was about 10-12 mtrs. away from the point where the incident allegedly took place.

60. We do not find any merit in this submission of Mr. Sethi. It has come in evidence that the accused fired a few shots, including those which injured Nitin Bansal and caused the death of Krishan Kumar Bansal. The distance between the place where the incident occurred and the places at which the pellets/ cases were found is not so large as to create any doubt with regard to their placement. Pertinently, PW-23 Puneet Puri, Senior Scientific Officer- cum-Ex-officio Chemical Examiner, FSL Rohini, Delhi, who examined the pistol and the bullets/ cartridges was not cross-examined on behalf of the accused, and it was not suggested to him that the empty case/ pellets could not have been found at the locations and they were actually found and shown in the scale site plan Ex. PW-6/A, in the natural course. It goes without saying that when a fire arm is used in a situation of the kind arising in the present case, the direction in which the pellets/ empty cases/ cartridges may fall need not result in a predictable pattern. Thus, we find no merit in this submission of Mr. Sethi. CrI. A. 833/2012 Page 29 of 35 61. Finally, while addressing the contentions regarding contradictions and discrepancies in the testimonies of eye witnesses as raised by the learned counsel for the defence, the learned trial court while relying upon the judgments of the Supreme Court in State of H.P. Vs. Lekhraj and another, JT1999(9) SC43 Surender Singh Vs. State of Haryana, JT2006(1) SC645 Ousu Varghese v. State of Kerala, (1974) 3 SCC767 Jagdish Vs. State of Madhya Pradesh, AIR 1981 SC1167 State of Rajasthan Vs. Kalki, (1981)2 SCC752 and Bharwada Boginbhai Hijri Bhai Vs. State of Gujarat, AIR 1983 SC7453(1), held: 100. Applying the settled principles of law to the facts of the present case it is evident that at the time of the incident it was Krishan Kumar Bansal, Nitin Bansal and Sandeep Kumar who were together in the shop. The whole incident must have lasted for hardly around a minute while they were in the shop when the accused snatched the bag containing money on the point of pistol. It is natural that the victims must have been taken by a surprise and were in a state of shock to have reacted immediately and it took them time to realize what was going on after the bag was snatched on the point of a pistol and the accused was going away to start his motorcycle when they actually followed the assailant/ accused while he was trying to start his motorcycle and also caught hold his hand

in which the accused was having the bag and the hand in which he was holding the pistol. Surprised on reaction of the victims the accused started firing gun shots from his Chinese pistol after managing to free his hand from the grip of Nitin while Sandeep snatched the bag containing the looted/ robbed amount from the hands of the accused and one shot hit Nitin Bansal on his hand while another shot hit Krishan Kumar Bansal on his stomach. While the attention of the public persons diverted to the victims the accused in the meanwhile started to flee on foot as his motorcycle did not start but for the fact that Sandeep Kumar raised an alarm initially by shouting 'oye oye' and Crl. A. 833/2012 Page 30 of 35 thereafter 'Pakropakro' on which public persons started chasing the accused and after a distance of about 20-30 feet they were able to apprehend him and also thrashed him before the police reached the spot. The witnesses Rakesh Mehra, Hemant Mehra and Rahul Gupta were the witnesses who were standing in the gali and had heard the gun shots when they saw the accused firing shots and running away. In fact Hemant Mehra (PW20) had come out of his house when the scuffle was going on and it was for this reason that he was able to see the face of the accused Anil Kumar. The distance and the directions from which the witnesses had witnessed the incident was different and this explains the difference in perception and how each public witness has perceived the incident from a different angle and in a different manner. It is normal that eye witnesses are often overtaken by events and occurrences which they could not have anticipated which has an element of surprise and therefore, the mental faculties cannot be expected to be attuned to absorb the details. Further the powers of observation differ from person to person and what one may notice, another may not and therefore, by and large it is not expected of a public witness to possess a photographic memory and to recall the details of an incident as a tape recorder more so when the incident is such that the sequence of events took place in rapid succession or in a short time span as has happened in the present case and hence, the contradictions & discrepancies found in the statements of the public witnesses namely Hemant Mehra, Rahul Gupta, Nitin Bansal and Sandeep Kumar as highlighted by the Ld. Defence Counsel [Ref.: Bharwada Boginbhai Hijri Bhai Vs. State of Gujarat (Supra)].

101. A discrepancy in the number of the motorcycle mentioned by the various eye witnesses has been duly highlighted by the Ld. Defence Counsel. I may note that

this discrepancy stands validly explained. The evidence on record including the photographs Ex.PW9/A9, Ex.PW9/A11, Ex.PW9/A12, Ex.PW9/A14 and Ex.PW9/A15 show that the motorcycle was in fact bearing an incomplete number plate i.e. bearing No.DL4SAW455 mentioned on the back side of the number plate. It is unrealistic to expect that Ex.PW9/A7, Ex.PW9/A6, CrI. A. 833/2012 Page 31 of 35 public persons should make a precise or reliable statement and to recall exact number of the motorcycle as seen by them since usually people make their reliable estimates on the basis of what they had seen at the spur of the moment. in PCR102 Therefore, under these circumstances, I hold that the discrepancies as pointed by the Ld. Defence Counsel if any, are not material and have been explained. The documentary/ circumstantial evidence in the form of wireless messages recorded forms Ex.PW18/A, Ex.PW18/B and Ex.PW18/C and the Forensic Evidence in the form of FSL and Ballistic Reports, corroborate the oral testimonies of the witnesses who I hold are reliable and trustworthy and also established the incident having take place and the witnesses having been present at the spot and witnessed the same. Even otherwise, none of the public witness was previously known to the accused or any history of animosity between them and hence, there is no reason why they would falsely implicate the accused only to assist the local police in working out the case as alleged by the accused. In view of the above, I find the argument raised by the Ld. Defence Counsel devoid of merit. 62. Lastly, Mr. Sethi seeks to advance an alternate argument that as per the MLC record of the appellant, it was found that the appellant was tested positive for having consumed alcohol. He states that the appellant had no intention to commit murder or cause grievous hurt since he was under the influence of alcohol.

63. Mr. Sethi seeks to place reliance upon Abrar @ Joochi V. State (Govt. of NCT of Delhi), 2012 IX AD (DELHI) 377, the relevant para of which is reproduced below: 22. This takes us to the alternative plea taken by the counsel that even assuming the case to be true, the matter would still not fall within the definition of murder but would be culpable CrI. A. 833/2012 Page 32 of 35 homicide not amounting to murder punishable under section 304 part i or ii IPC. We notice that there was no previous animosity between the appellant and the deceased. On the day of incident, they all were present at their place of work to worship tools. They had performed the customary pooja and there was no annoyance. Only when they

were enjoying drinks, minor tiff occurred between the accused and the deceased over making larger peg for the deceased. Even that matter was pacified and settled. Thereafter, PW-6 and PW-8 left. When Pritam went out, there was no animosity left between the two. We further note that there was no pre meditation to inflict injury to the deceased as the appellant was not armed with any weapon. Only a single fatal blow was inflicted on the neck of the deceased. Both the accused and the deceased were in an inebriated condition. The appellant had no criminal antecedents and was not involved in any such criminal activities. The weapon used in the occurrence was an ordinary Rapi (used for cutting clothes/leather) and was available at the spot. The consumption of liquor apparently impaired mental faculties and the appellant lost power of self-control. In the initial altercation, no physical harm was caused by the appellant to the deceased. The appellant did not take undue advantage and victim was given a solitary fatal stab blow in a sudden fight, in a fit of rage and under the influence of liquor. It ruled out his intention to murder Vinod. 64. We do not find any merit in this submission of Mr. Sethi either. The present is a case where the appellant went armed with a loaded pistol to commit robbery at gunpoint. He even managed to snatch the money bag at gunpoint and fled from the office of Krishan Kumar Bansal and Nitin Bansal. When the deceased and the injured along with Sandeep Kumar tried to foil his attempt to flee with the money on his motorcycle, he did not hesitate to use his weapon and to shoot at Krishan Kumar Bansal and Nitin Bansal. Even after shooting them, he attempted to flee from the spot. Thus, it was a premeditated and planned act of the appellant inasmuch, as, he was CrI. A. 833/2012 Page 33 of 35 aware that the victims were carrying substantial amounts of money. Reliance placed on Abrar (supra) is not apposite in the facts of the present case. That was a case where the incident took place without any premeditation or planning. The incident took place between persons who were known to each other with no previous animosity between the accused and the deceased. Only one fatal blow was inflicted on the neck of the deceased, and that too when the accused was not armed with any weapon. The accused had no criminal antecedents and was not involved in any criminal activity. On the other hand, the incident in question took place with premeditation; with a deadly weapon; between persons who were strangers, and; the appellant appears to be

involved in the theft of the motorcycle which he used during the commission of the crime. The Supreme court in Shankar Jaiswara v. State of W.B., (2007) 9 SCC360 has observed that there is Nothing to suggest that at the time the appellant attacked the victim his mind was so affected by the drink he had voluntarily taken that he was incapable in forming the intention requisite for making his act the offence charged against him. - plea of intoxication rejected.

65. In light of the facts, evidences and testimonies produced before us we do not find any reason to doubt the credibility of the public witnesses involved in the present case. To reiterate the conclusion arrived by the trial court. We agree that minor variations in testimonies of eye witnesses are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. CrI. A. 833/2012 Page 34 of 35 66. Having considered the entire evidence on record, this Court does not find any fault in the findings arrived at by the trial Court with regard to conviction of the appellant under Section 392/397/ of IPC and Sections 25/27/ of the Arms Act. Therefore, the conviction and sentence of the appellant for the said offences is hereby upheld.

67. Appeal is accordingly dismissed. MARCH22 2018 (VIPIN SANGHI) JUDGE (P. S. TEJI) JUDGE CrI. A. 833/2012 Page 35 of 35

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