

Kishan Vs. State

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Court : Delhi

Decided On : Jul-17-2015

Judge : Vipin Sanghi

Appellant : Kishan

Respondent : State

Advocate for Pet/Ap. : Mr. K.K. Manan

Judgement :

\$~R-41. * IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

03. 02.2015 % + Judgment delivered on:

17. 07.2015 CrI.A. 201/2009 KISHAN Through: Appellant Mr. K.K. Manan, Mr. Nipun Bhardwaj, Mr. Ankush Narang & Mr.Raunak Satpathy, Advocates. versus STATE Through: Respondent Mr. Rajat Katyal, APP. CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI

JUDGMENT

VIPIN SANGHI, J.

1. This present first appeal has been preferred by the Appellant Kishan under Section 374 Criminal Procedure Code, 1973 (Cr.P.C.) to assail the judgment dated

24.01.2009 and order of sentence dated 27.02.2009 passed by the Learned Additional Sessions Judge (ASJ) Fast Track Court, South Delhi District, New Delhi in SC No.18/2008 arising out of First Information Report (FIR) No.224/1997 registered at Police Station (PS) Greater Kailash I (GK-I) under Sections 452/395/506/412/34 Indian Penal Code, 1860 (IPC). The Appellant has been convicted under Sections 392/452/506-II/34 IPC, and sentenced to undergo Rigorous Imprisonment (RI) for a period of five years and to a fine of Rs. 500/-, in default of payment of fine, further RI for 10 months for the offence punishable under Sections 392/34 IPC. He has also been sentenced to undergo RI for a period of 3 years and fine of Rs.3,000/-, in default of payment of fine, further RI for 6 months for offence punishable under Sections 452/34 IPC. For the offence punishable under Sections 506-II/34 IPC, he has been sentenced to undergo RI for a period of 2 years and a fine of Rs. 2,000/-, in default of payment of fine, further RI for 4 months.

2. The case of the prosecution is that: on 06.06.1997 at about 05:15 PM, Sh. Rajiv Saxena (PW-7) S/o Sh. BL Saxena (PW-1) R/o S-164, Second Floor, GK-I, New Delhi telephonically informed the Police officials of PS GK-I about a theft that had occurred at his house. Information was recorded vide DD No.49-B (PW-17/A) in PS GK-I, and investigation was handed over to SI Rishi Pal Singh (PW-17). Thereafter, SI Rishi Pal Singh (PW-17) alongwith Ct. Inder Sen (PW-6) and Ct. Naresh Kumar (PW-10) went to the house of the complainant, and found that the entire house had been ransacked. The IO, SI Rishi Pal Singh (PW-17), recorded the statement of the complainant.

3. The complainant B.L. Saxena (PW-1) stated that he along with his family members were residing in the aforesaid mentioned house. He stated that on 06.06.1997 around 3:00 PM, while he was present in his house with his wife Mithlesh (PW-3), his two daughter-in-laws Smt. Smita (PW-2) and Smt. Monika (PW-4), and his two granddaughters viz. Anupriya and Arpana (PW-5) and one servant Anil, the door bell of the house rang, which was answered by his granddaughter, Aparna (PW-5), who was followed by their servant Anil. Four boys aged 20-22 years entered the house of the complainant. The boys were of average height. Three of the four had a thin built, and the fourth boy was heavily

built. Two of the boys were armed with knives, and the other two with country made revolvers. The accused persons, while holding Anil and Aparna told all the family members of the complainant, at gun/ knife point, to go into the room of the elder daughter-in-law, Smt. Samita (PW-2). The accused persons asked them to hand over all the valuables to them, failing which they threatened to kill them. One of the boys increased the volume of the TV. The accused persons took away a VIP briefcase/suitcase containing Rs. 7 Lakhs. The amount was kept in seven bundles of Rs. 1 Lakh each in separate polythene; the money was brought for paying the salary of the employees at their factory. The suitcase also contained a raxine pouch containing bank account statement of Sh.Anoop Saxena (PW-8) of Grindlays Bank, a cover letter of insurance policy of their factory and one allotment advice of Bank of Baroda, etc. The accused had also taken away all the cash and jewellery in the almirah of the elder daughter-in-law. The accused were asking, again and again, as to where the younger daughter-in-law was.

4. Further case of the prosecution is that three of the accused persons took the wife of the complainant to his room, and removed all the cash and jewellery from the almirah in that room. The fourth boy stood near the family members with a pistol in his hands. Two of the accused persons drank water from a bottle taken from the refrigerator, and placed the glass on the fridge after drinking. In the meantime, the younger daughter-in-law came out from the bathroom; she was also thrown in the room as the other family members. The accused ransacked the entire house. Thereafter, complainant along with the other family members were moved to the room of the complainant, where their hands and legs were tied, and cloth had been put in their mouth. They put all the jewellery in a big polyethylene bag with the name Big Jose. While taking the briefcase/ suitcase and the polythene bag, the accused threatened the complainant and his family members to remain in the same position, and not to inform the Police, as the accused persons knew where the factory was situated and knew where the school - where the children studied, was located, and that they would kidnap them. After remaining in the same position for some time, out of fear of the accused, the complainant and his family members untied themselves, and found that the room of the younger daughter-in-law was also ransacked, and the cash and jewellery in her room was also missing. The telephone wires of the house had been disconnected. They did

not telephone to the Police due to fear.

5. After sometime, the younger daughter-in-law intimidated her husband from the telephone of Mr. Tanwar - a neighbour living on the first floor of the same building. The younger son further informed the complainants elder son, who was in the NOIDA factory. The elder son of the complainant informed the police after reaching the house. The complainant informed the Police that the accused persons had ransacked the house for about an hour, and that he could identify them. He stated that the jewellery stolen from the house included 12 gold bangles, 4 watches, one gold set and some gold chains, etc of his daughters-in-law and wife. He stated that he will give a detailed list of cash and jewellery after checking the articles. He stated that the four boys/ accused had forcibly entered their house and had looted the same.

6. The IO, SI Rishi Pal Singh (PW-17) after recording the above statement, endorsed the Rukka (Ex. PW-1/A) and sent Ct. Inder Sen (PW-6) to PS GK-I for registration of FIR. FIR was registered vide FIR No.224/97 under Sections 452/392/506/34 IPC. During the investigation, the IO recorded the statement of the witnesses; prepared a site plan; got the spot photographed; got the spot inspected by the crime team and the dog squad, and; obtained the report of the crime team.

7. The prosecution further claimed that on 07.06.1997, written information was received from In-charge PP Pushp Vihar, PS Malviya Nagar about the arrest of two accused persons, Appellant and Kishore (since deceased) in relation to FIR No.547/1997 under Sections 411/34 IPC. One briefcase/suitcase containing Rs. 7 lakhs and some documents were recovered from them. Further, one desi katta each was also recovered from them, which were used by them during the commission of the offence in the present case. Proceedings about the desi kattas were conducted separately vide FIR Nos. 548/97 and 549/97 of PS Malviya Nagar.

8. During the investigation, the IO obtained the copies of the FIRs of the cases (regarding possession of desi kattas) and placed the same on the record of the present case. The accused - Kishore (since deceased), and the Appellant, were arrested by the IO in the present case, and pointing out memo (Ex. PW-16/D) of the place of commission of offence was made at their instance. The accused in

their disclosure statements admitted their involvement in the case. On the basis of their disclosure statement, coaccused Gullu was arrested; at his instance 3 wrist watches, one Gold kara and one knife allegedly used in the crime were allegedly recovered. The same were seized by the IO (PW-17), vide seizure memo Ex. PW-17/M. The seizure memo of the knife is Ex. PW-17/O. The three accused, i.e the appellant, Kishore (since deceased) and Gullu disclosed involvement of two other associates, Haroon and Mushtaq (since deceased). Mushtaq (since deceased) was arrested on 09.06.1997 on basis of secret information. When the accused Mushtaq was allegedly taken to A-23, Lal Kaun, Delhi (factory) for the recovery of the jewellery items of this case, he allegedly consumed some chemical/ poisonous substance, with an intention to commit suicide. Since his condition deteriorated, he was taken for admission to Sehgal Nursing Home, but was declared dead. A case under Section 309 IPC was registered vide FIR No.227/09. The IO (PW-17) also placed the copy of the death certificate of Mushtaq on record of this case, and statements of the witnesses were recorded by him.

9. On 09.06.1997, accused Haroon moved an application before the concerned MM, Patiala House Courts for surrendering himself, and then he was arrested and interrogated after being remanded to Police custody. At the instance of Haroon, some stolen articles were allegedly recovered, i.e. one gold ring and two wrist watches. Seizure memo was also prepared vide Ex. PW-17/L. IO recorded his disclosure statement and his pointing out memo was prepared, which is Ex. PW-17/K. The IO moved an application for conducting TIP proceedings of the accused persons. The appellant and Kishore (since deceased) refused to participate in TIP proceedings, whereas accused Gullu participated in the proceedings. The case properties recovered during investigation were identified by the witnesses at the time of TIP proceedings. The chance prints of the suspects lifted from the spot were sent to CFSL, along with the specimen of finger prints of all the accused persons (obtained after the permission of the Court). After conclusion of investigation, charge-sheet was filed under Sections 452/395/506/412/34 IPC against the appellant, Kishore (since deceased), Haroon Ali and Gullu. As Mushtaq expired during the course of the investigation, he was not named as accused.

10. After the provisions of Section 207 Cr PC were complied with by the Ld. MM, the case was committed to the Sessions Court vide order dated 07.01.1998. A prima facie case was found to be made out. Consequently, the appellant, Kishore (since deceased) and Haroon Ali were charged for the offences punishable under Sections 452/392/34 read with Section 397 and Sections 506/34 IPC. A prima facie case was also made out against Gullu for the offence under Section 411 IPC.

11. The prosecution, in support of its case, examined 17 Prosecution Witnesses (PWs). They were the following: (i) PW-1 Sh. B.L. Saxena - the complainant. In his statement, he gave a detailed account of the commission of the alleged offence of robbery which had taken place in his house on the date and time of the incident. He has exhibited his previous statement given to the Police (Exhibit PW-1/A). He exhibited his letter dated 07.06.1997 given on the day following the incident as Exhibit PW-1/B regarding the missing passports, etc. - which were later on found in his house. He identified all the accused persons as well as the case property, which had been recovered during investigation by the police. The identified articles were: (a) 5 wrist watches as Ex. PW-1/1 to 5, (b) one gold kara as Ex. P6, (c) one gold ring as Ex. P7, (d) 14 bundles of photocopies of the currency notes in the denomination of Rs.50/- each as Ex. PW-1/P8 to P21, (e) 14 original currency notes of Rs. 50/- each as Ex. PW-1/P22 to P35, (f) 63 bundles of photocopies of the currency notes of Rs.100/- each as Ex. PW-1/P36 to P99, and (g) 63 original currency notes of Rs. 100/- each as Ex. PW-1/P100 to P162. (ii) PW-2 Smt. Smita Saxena - is the daughter-in-law of the complainant/PW-1. She stated that she was present in the house at the time of commission of the alleged robbery in their house. She identified all the accused persons, except accused Haroon. She identified the case property pertaining to this case, like PW-1. (iii) PW-3 Smt. Mithlesh Saxena - is the wife of the complainant/ PW-1. Her examination-in-chief was recorded on 27.09.2000. However, subsequently she was dropped as a witness on 21.09.01 by the Ld. Addl. P.P. (iv) PW-4 Smt. Monika - is the daughter-in-law of the complainant/ PW1. She gave her version of the robbery in question which had taken place in her house in her presence. She identified all the accused persons and a part of the case property, i.e. (a) 5 wrist watches Ex. PW1/1 to 5, (b) one gold kara as Ex. P6, and (c) one gold ring as Ex. P7. During her cross examination, she stated that the accused Haroon was not present in the house at

the time of incident. (v) PW-5 Ms. Aparna - is the granddaughter of the complainant/ PW-1. She too was an eye-witness of the alleged robbery. She identified all the accused persons present in the court as robbers. (vi) PW-6 Ct. Inder Sen - deposed that he had taken a copy of the DD No.49B from the Police Station and handed over the same to IO/ SI Rishi Pal (PW-17). They both reached the house of the complainant/ PW-1, along with Ct. Naresh (PW-10). There, the IO had recorded the statement of PW-1 and endorsed the Rukka thereon, and sent PW-6 to the PS for registration of the case. CrI. A. 201/2009 returned back to the spot and handed over a copy of the FIR (Exhibit PW-15/A) and the original Rukka to the IO. (vii) PW-7 Sh. Rajiv Saxena is the son of the complainant/ PW-1. At the time of commission of robbery he was not present at his house. He was present in his office and was informed about the commission of the robbery by his wife. Thereafter, he reached his house and found his house dishevelled and the family members in a state of shock. He then informed his elder brother on telephone, who also arrived at home at around 04:30 P.M. and then they informed the police about the incident. (viii) PW-8 Sh. Anoop Saxena is the other son of the complainant/ PW-1. He was also not present at the spot at the time of commission of the offence. He stated that on receiving telephonic information from his brother about the commission of robbery at their house, he reached his house and found his family members in a shocked state. The house was fully ransacked. He further deposed regarding arrival of the police - including the senior police officers, and regarding the investigation conducted by them at the spot. He also claimed that about 11.30 P.M. on the date of the incident itself, he was called in the PS Malviya Nagar and at the said PS, he had identified the cash and jewellery and watches. (ix) PW-9 ASI Kuldeep Singh - the Finger Prints Expert from Finger Prints Bureau, PTS Malviya Nagar deposed that he had developed 12 chance prints and had taken their photographs from the spot. He had sent them to Finger Prints Bureau for comparison vide his report Ex. PW-9/A handed over to the IO. (x) PW-10 Ct. Naresh Kumar - deposed that he accompanied the IO/ SI Rishi Pal (PW-17) to the residence of the complainant/ PW-1 after receipt of DD No.49B by the IO regarding commission of theft at the house of the complainant. He also stated that Ct. Inder Sen (PW-6) was also with him. He deposed on the same lines as PW-6 regarding recording of statement of the complainant/ PW-1; endorsement of Rukka by the IO

thereon and handing over the same to PW-6 for registration of the case at the PS, and; the subsequent return of PW-6 at the spot, along with a copy of the FIR and the original Rukka. He stated that the site plan (Ex. PW-17/C) was prepared by the IO in his presence and the dog squad and the crime branch team were called at the spot and chance prints were also lifted from the spot, and statement was recorded by the IO. (xi) PW-11 HC Surender Pal Singh stated that he was posted at PP Pushp Vihar and on 06.06.1997, i.e. the alleged date of commission of robbery, he had participated in the investigation of the case pertaining to recovery of robbed briefcase/suitcase with Rs. 7 Lakhs and the recovery of a desi katta each from the appellant and Kishore (since expired), from the area within the jurisdiction of his PS. PW-11 was partly examined in chief on 05.12.2001. His further examination-in-chief was deferred for want of original memos and the case property. However, he was not summoned again for his further examination-in-chief and his cross examination. The Trial Court, therefore, held that his deposition could not be read in evidence. (xii) PW-12 ASI Chandra Mani was the Duty Officer of PS Greater Kailash on the date of commission of the alleged robbery. He had recorded in this case the FIR (Ex. PW-12/A) under Sections 452/392/506/34 IPC. (xiii) PW-13 Sh. A.K. Kohar, was the then M.M., who had conducted the TIP proceedings of the accused Gullu in Tihar Jail on 28.06.1997. His order was exhibited as Ex. PW-13/A, TIP proceedings were exhibited as Ex. PW-13/B; certificate regarding correctness of his proceedings as Ex. PW-13/C, and; his order allowing a copy of the TIP proceedings to be given to the IO as Ex. PW-13/D. He stated that in the TIP proceedings, the witness Sh. B. L. Saxena/ complainant failed to identify the accused and Sh. Rajiv Saxena (PW-7) had identified a wrong person, namely, Mahmood as an accused in this case. He had also conducted the TIP of the case property of this case on 30.06.1997 in which witness Smt. Smita (PW-2) and Sh Rajiv (PW-7) had participated. He proved the application dated 27.06.1997 of the IO for TIP proceedings as Ex. PW-13/E; TIP proceedings as Ex. PW-13/F; the identification by the IO of the witness as Ex. PW13/G; certificate regarding correctness of the TIP proceedings as Ex. PW-13/H, and; the order allowing a copy of the above TIP proceedings to be given to the IO as Ex. PW-13/I. He deposed that the said witnesses namely Smita (PW-2) and Rajiv (PW-7) identify the case property. (xiv) PW-14 HC Jai Pal Singh deposed

that he was posted at PP Pushp Vihar, PS Malviya Nagar on 06.06.1997. He was a witness to the apprehension of accused Kishan and Kishore @ Toni (since expired) from near the Sheikh Sarai red light. He further stated that the said accused persons were going on a two-wheeler scooter No.DAM-841. After they were apprehended, PW-14 intimated PP Pushp Vihar, and subsequently, SI K P Malik (PW-16) along with SI Om Parkash, HC Surender Pal (PW-11) and Ct. Anar Singh reached the spot. He deposed regarding the recovery of one desi katta each, loaded with live cartridge, from the two accused persons, i.e. the appellant and Kishore (since deceased). He deposed that accused Kishore @ Toni (since expired) was driving the scooter and accused Kishan was sitting at the pillion seat and having a light brown colour suitcase of make VIP which was found to contain the robbed amount of Rs.7 Lakhs and some bank documents. PW-14 deposed regarding the arrest of these two accused; their interrogation and; their making disclosure statements regarding the commission of the offence in question by them, along with their other co-accused. He further deposed that the currency notes/ cash was in the denomination of Rs.50, Rs.100 and Rs. 500/- and the same was in the form of 14 packets. He exhibited the disclosure statements of accused Kishore @ Toni (since expired) and the appellant Kishan as Ex. PW-14/A and Ex. PW-14/B respectively. He identified the briefcase/suitcase recovered from the appellant and Kishore as Ex. PW-14/2. The same was seized vide memo Ex. PW-14/C in the case FIR No.547/97, registered regarding the recovery of the robbed amount in question. He identified the bundles of photocopies of the currency notes and the original currency notes, just like PW-1 and PW-2. (xv) PW-15 HC Sudesh deposed that he was the duty officer of PS Malviya Nagar on 06.06.97 and that he had recorded the FIR in case FIR No.547/97 under Section 411 IPC. The photocopy of the same was exhibited as Ex. PW-15/A, after seeing the original, which was returned. (xvi) PW-16 SI K P Malik deposed that he was the IO of the case FIR No.547/97 under Section 411 IPC of PS Malviya Nagar. He deposed that he was posted at PP Pushp Vihar, PS Malviya Nagar on 06.06.1997. He arrived at the spot of apprehension of the appellant Kishan and Kishore @ Toni (since deceased) upon receiving the information regarding their apprehension. He also deposed regarding the subsequent search of the accused persons and the recovery of one desi katta each, loaded with live cartridge, from the two accused

Kishan and Kishore (since deceased) and the recovery of the briefcase/suitcase containing the amount of Rs. 7 Lakhs allegedly robbed in the present case. He also deposed that the currency notes were in the denomination of Rs.50, Rs.100 and Rs.500 and the same were kept in separate polythene, each containing Rs. 1 Lakh. He deposed that some other documents relating to the transactions of banks like certificate of Bank of Baroda and other banks were also recovered from the briefcase/suitcase. He proved the seizure memo of the briefcase/suitcase, prepared in the case FIR No.547/97, as Ex. PW-14/C and the seizure memo of the scooter recovered from the two accused persons as Ex. PW-16/A . He exhibited the statement of Ct Jaipal as Ex. PW-16/F; his endorsement as Ex.PW-16/G, and stated that the same was handed over to Ct. Jaipal for registration of the case. On that basis, the FIR No.547/97 under Section 411/34 IPC was registered against the two accused persons Kishan and Kishore (since deceased). He states that he conducted personal search of accused Kishan and Kishore (since deceased) vide memos Ex. PW16/B and Ex. PW-16/C respectively, and recorded their disclosure statements as Ex. PW-14/B and Ex. PW-14/C (proved by PW-14) respectively. He also stated that he prepared the pointing out memo of the place of commission of robbery at the instance of the accused persons as Ex. PW-16/D and the site plan of the said place as Ex. PW16/E. He further states that he informed the PS Greater Kailash regarding the apprehension of the said two accused persons, as the case of robbery allegedly committed by the accused persons pertained to PS Greater Kailash. He deposed that he got the case property deposited in the police malkhana. He identified the 14 bundles of photocopies of the currency notes in the denomination of Rs.50/- each as Ex. PW-1/P8 to P21, and 14 original currency notes of Rs. 50/each as Ex. PW-1/P22 to P35, and also 63 bundles of photocopies of the currency notes of Rs.100/- each as Ex. PW-1/P36 to P99, and 63 original currency notes of Rs.100/- each as Ex. PW-1/P100 to P162. (xvii) PW-17 SI Rishi Pal Sharma deposed that upon receipt of DD No.17A (PW-17/A) he reached the spot along with Ct. Inder Sen (PW-6) and Ct. Naresh (PW-10), and recorded the statement of the complainant Sh. B.L. Saxena as Ex. PW-1/A. He stated that he made the endorsement Ex.PW-17/B on the same and sent PW-6 to the PS for registration of the case. He stated that PW-6 returned back to the spot with a copy of the FIR (Ex. PW-12/A) (wrongly noted in the statement as Ex. PW-14/A) and the

original Rukka (Ex. PW-1/A). He exhibited the site plan (Ex. PW-17/C) prepared at the spot at the instance of the complainant/ PW-1. He stated that he got the spot of crime photographed by the crime branch team, which also lifted the chance finger prints. He stated that he had obtained the report Ex. PW-9/A of the crime team. He further stated that in the intervening night of 06/ 07.06.1997, he received one written information from SI KP Malik (PW-16), Incharge PP Pushp Vihar, PS Malviya Nagar regarding recovery of some robbed articles of this case exhibited as Ex. PW-17/E. He stated that he recorded the statement of the complainant in this regard and the complainant handed over a letter Ex. PW-1/B to the SHO regarding some other missing articles. He further stated that on the next day, he had gone to Patiala House Courts and formally arrested accused Kishan and Kishore @ Toni (since deceased) with the permission of the Court and recorded their disclosure statements after they were taken on police remand for two days. He stated that the said two accused had disclosed their involvement, along with involvement of co-accused Gullu and Haroon, in this case. He stated that it was at the instance of the appellant Kishan and Kishore (since deceased) that the other coaccused Gullu and Haroon were also arrested in this case. He proved the personal search memo of accused Haroon as Ex. PW-17/F, disclosure statement of accused Haroon as Ex. PW-17/G and his pointing out memo as Ex PW-17/K. He proved the disclosure statement of accused Gullu as Ex. PW-17/H and his pointing out memo as Ex. PW-17/J.

He further deposed that the recovery of one gold ring and two watches was effected at the instance of accused Haroon, which were seized vide seizure memo Ex. PW-17/L. He further deposed that at the instance of accused Gullu, recovery of three watches and one gold kara was effected vide seizure memo Ex. PW-17/M. He deposed that one knife was also recovered from the accused Gullu which was seized vide memo Ex. PW-17/O. The sketch of the said knife was exhibited as Ex. PW-17/N. He further deposed that the TIP proceedings of the accused Gullu and Haroon and the TIP proceedings of the jewellery articles were got conducted vide Ex. PW-13/B, Ex. PW-13/C, Ex. PW-13/F and Ex. PW-13/H and the case property, i.e. the scooter and the briefcase containing Rs.7 Lakhs, which were seized by SI KP Malik (PW-

16) were also deposited by him in the police malkhana. He further stated that the currency notes and the briefcase were released on superdari to the complainant B.L. Saxena (PW-1) after taking photographs of all the currency notes as per the directions of the Court. He identified the case property, i.e. 5 wrist watches as Ex. PW-1/1 to 5, gold kara as Ex. P6, gold ring as Ex. P7, 14 bundles of photocopies of the currency notes in the denomination of Rs.50/- each as Ex. PW-1/P8 to P21, 14 original currency notes of Rs. 50/- each as Ex. PW-1/P22to P35, 63 bundles of photocopies of the currency notes of Rs.100/- each as Ex. PW-1/P36 to P99, and 63 original currency notes of Rs.100/- each as Ex. PW-1/P100 to P162.

12. The statement of the accused persons were recorded under Section 313 Cr.P.C. after putting to them all the incriminating evidence brought on record by the prosecution, but they denied the case of the prosecution and claimed that they had been falsely implicated in this case. Accused/ appellant Kishan claimed that he had already been acquitted in the case FIR No.549/97 registered against him by PW-16 SI KP Malik under the Arms Act vide judgement dated 29.06.1998. The accused did not lead any defence evidence. The report of the Director, Finger Prints Bureau, FSL, Malviya Nagar regarding the comparison of the chance prints lifted from the spot with the specimen finger prints of the accused persons, which was received during the pendency of the case was exhibited as Ex. PX (Colly) vide order dated 21.10.2008. After recording no objection of the accused, the said report Ex. PX (Colly) was put to the accused Kishan subsequently in a supplementary statement recorded under Section 313 Cr.P.C. as the learned defence counsels representing the accused persons had given their no objection in this regard. The above report was also put to the accused Kishan subsequently in his supplementary statement recorded under Section 313 Cr.P.C.

13. The accused Kishore @ Toni expired on 19.06.2007. Consequently, the proceedings against him were abated vide order dated 17.08.2008. As aforesaid, the appellant Kishan stands convicted and sentenced under Sections 452/392/506(II)/ 34 IPC, whereas the accused Haroon and Gullu were convicted for the offence under Section 411 IPC.

14. The first submission of Mr. K.K. Manan, learned counsel for the appellant is that the servant Anil Kumar was not examined by the prosecution. He submits that the failure of the prosecution to examine the said eye witness puts in doubt the case of the prosecution. Mr. Manan further submits that the refusal of the appellant to join the TIP has been considered as an incriminating circumstance. He submits that there was justification for the said refusal, since he had been shown to the complainant in the police station. In this regard, he has relied upon the cross examination of the complainant/PW-1, where he stated I was called in the police station after the accused were arrested. At that time, the accused were in the police station. I had identified the accused there.

15. He further submits that though the prosecution had claimed that the amount of Rs.7 lacs in the briefcase/suitcase was in denomination of 50 and 100 rupee notes, consisting of 14 bundles of currency notes of denomination of Rs.50 each, and 63 bundles of currency notes of Rs.100 each, however, PW-16 SI K.P. Malik, the IO in case FIR No.547/97 under Section 411 IPC, PS Malviya Nagar deposed that the currency notes allegedly recovered from the appellant and Kishore @ Tony (since deceased) were in the denomination of Rs.50, 100 and 500. Mr. Manan has also referred to the deposition of PW-11 HC Surender Pal Singh, who claimed to be present at PP Pushp Vihar on 06.06.1997 at 5:20 p.m. He stated that the briefcase allegedly recovered from the appellant and Kishore (since deceased) was opened and that the currency notes which were kept in the briefcase were recovered from the accused. The currency notes were checked and found to have been kept in 7 separate polythene bags, and each bag contained Rs.1 lakh in the denomination of Rs.500/-, Rs. 100/- and Rs. 50/-. Mr. Manan has also drawn the attention of the Court to the seizure memo Ex PW-14/C, which records that the currency notes of Rs.7 lacs - in 7 separate polythene packets of Rs.1 lac each of denomination of Rs.50, 100 and 500 were recovered. Similarly, SI K.P. Malik, PW-16 had deposed in relation to the contents of the briefcase as follows:

In the police post the contents of briefcase were checked and it was found containing seven packets of currency notes of the denomination of 50/-, 100/- and 500/- which were kept in polythene separately. Each polythene packet was

containing Rs.1 lacs.

16. Mr. Manan submits that the material witness in relation to the denomination of the currency notes deposited into, and released from the malkhana, namely, the mohrar malkhana not having been examined, it has not been established that the currency notes Ex. PW-1/P22 to P35 & Ex. PW-1/P100 to P162 were recovered from the accused. In this regard, the cross examination of PW-16 is referred to, who, inter alia, stated:

It is correct that the currency notes of Rs.500/- were in the briefcase and same were seized. The same were deposited with the MCH(M) in the sealed condition.

17. Mr. Manan submits that there is a clear contradiction in the case of the prosecution with regard to the property allegedly recovered from the accused. Mr. Manan submits that no currency notes of the denomination 500 were produced by the prosecution before the court. This shows that the so called recovery and seizure from the appellant and Kishore (since deceased) is not genuine.

18. Mr. Manan further submits that no bank official was examined by the prosecution to establish the withdrawal of large amount of money of Rs.7 lacs from the bank as claimed by the prosecution.

19. Mr. Manan submits that the prosecution did not produce any evidence to establish that jewellery in question had been purchased by the complainant. He further submits that the complainant had been shown the jewellery after taking out the same from the Malkhana and the identification proceedings in respect of the same were, therefore, vitiated.

20. The next submission of Mr. Manan was that the public witness, before whom the appellant was allegedly apprehended, was not produced. He submits that the appellant stands acquitted in the case registered under the Arms Act (being FIR case No.549/97 under Section 25 of the Arms Act), which itself throws serious doubt on the case of the prosecution that the appellant was apprehended with the stolen property and a desi katta. Mr. Manan submits that since there are two views of two judges, namely, one convicting the appellant in the present case and the

other acquitting the appellant in the case arising out of the Arms Act-in relation to the same incident of alleged recovery, the view that goes in favour of the appellant has to be accepted by giving him the benefit of doubt.

21. Mr. Manan submits that the circumstances in which the appellant and Kishore (since deceased) were apprehended are, in themselves, very doubtful. PW-14 had stated that on 06.06.1997, while he was posted at Malviya Nagar/Pushp Vihar, he had gone for depositing a sample regarding the case FIR No.494/97 on motor cycle at Vikas Sadan, New Delhi, and that, after depositing the sample, while he was returning to Pushp Vihar via Chirag Dilli, near the Sheikh Sarai red light, he saw a two wheeler scooter bearing No.DAM841 on which two boys were present. Due to the suspicious number of the said scooter, he tried to stop the boys by chasing them on the motor cycle, but they turned towards Birla Vidya Niketan, Pushp Vihar and then he stopped the boys by placing his motor cycle ahead of the scooter. After they were stopped, PW-14 apprehended both the persons who were the appellant and Kishore @ Tony (since deceased). However, PW-14 did not produce any evidence to substantiate his claim that on the said date he had gone to Vikas Sadan to deposit any sample regarding FIR case No.494/97, and that he was returning from Vikas Sadan.

22. Mr. Manan submits that the testimony of PW-5 contradicts the case of prosecution that the appellant and Kishore (since deceased) were apprehended on the same day while riding a two wheeler scooter bearing No.DAM841 near Sheik Sarai red light. PW-5 had stated that the accused persons were apprehended by the chowkidar of the colony.

23. Mr. Manan further submits that even though the finger prints were lifted from the glass, but the glass in which the accused had allegedly consumed water, had not been seized.

24. Mr. Manan submits that PW-2 Smita Saxena had deposed that the accused had taken a creamy coloured briefcase and opened the same with the help of a knife. The said briefcase was containing cash to the tune of Rs.7 lacs. However, PW-4 in her cross examination had stated that the suitcase containing Rs.7 lacs was not locked when the accused person took the same from the house. The

police did not inquire from PW-4 about the keys of the said suitcase. Mr. Manan submits that this clearly brings out the contradiction in the statements of PW-2 and PW-4. While PW-2 stated that the suitcase was locked, and opened with a knife; PW-4 stated that the suit was not locked.

25. Mr. Manan submits that the story set up by the prosecution with regard to the briefcase/suitcase being locked, or that the key was recovered from the accused Kishore as set up by the prosecution has no basis, and is imaginary. In this regard, he has not only relied upon the testimony of PW2 and PW-4, but has also referred to the statement of PW-14, who, inter alia, stated:

SI K.P. Malik took the said briefcase from the possession of Kishan and key of the said briefcase were taken from Kishore @ Tony and the said briefcase was opened by SI K.P. Singh, and got recovered currency notes which were kept in a polythene packets and there were currency notes of denomination of 50/-, Rs.100/- and 500/-.

26. Mr. Manan submits that the seizure memo Ex. PW-14/C records that the key of the briefcase was also kept inside the briefcase itself before it being turned into a pullanda. However, the same was not produced or exhibited. Similarly, PW-16 stated:

The briefcase was kept in a pulanda. The key of the briefcase was also left in the briefcase. The briefcase was closed with a cloth and sealed with the seal of K.P. The briefcase was seized vide seizure memo.

27. Mr. Manan submits that the prosecution has not explained as to how the key of the briefcase/suitcase came into possession of the accused Kishore (since deceased) as none of the prosecution witnesses had claimed that while committing the robbery, the accused had demanded or taken away the key.

28. Mr. Manan submits that the fact that the story of the prosecution being imaginary is also established by the fact that the so-called key was not seized or exhibited.

29. Mr. Manan submits that the appellant Kishan was not identified by PW-2 in the Court. He submits that there is no specific recording made by the Trial Court in respect of the identification of the appellant by PW-2. PW-2 had, inter alia, stated:

Accused Gulu put the knife at the neck of my daughter Aparna, and told to me that you produce the jewellery and cash otherwise your daughter will be killed. Then afterwards the accused persons except accused Harun, present in the court got opened my Almirah on the point of knife.

30. Mr. Manan submits that, similarly, PW-3 also did not specifically identify the appellant individually as she merely stated:

All the accd. persons present in the court .. (illegible) again asked to us to hand over all the cash and jewellery and put the knife on the neck of my older grand daughter Aprana (illegible) and threatened us that if we will not handed over the cash and jewellery they will kill one of us.

31. In the same vain, PW-4, inter alia, deposed:

All the accused are present in the court who were having pistol and knives in their hands.

32. PW-5 had also generally stated:

All the boys were around 20 years old. All the accd. persons present in the court are the same who were came to our house for robbery.

33. Mr. Manan has also referred to the deposition of PW-8 Anup Saxena, wherein he stated that he and PW-7 Rajiv Saxena had accompanied the ACP to the police station. PW-8 had stated in his cross examination as follows:

At about 11.00 p.m./ACP Greater Kailash informed us on tel. and asked us to accompany to P.S. Malviya Nagar or nearby police post for identification of the robbed articles. At that time, I myself and Rajiv Saxena had accompanied the ACP to that place. The police has shown to me so many articles and household goods but among those goods I identify only those articles which belong to us.

34. Mr. Manan further submits that the seizure memo in respect of the scooter Ex. PW-16/A has been signed by PW-11 HC Surender Pal Singh and PW-14 HC Jaipal Singh, but the jama talashi of the appellant Ex. PW16/B was conducted only by PW-11 HC Surender Pal Singh, and the same has not been signed by PW-14 HC Jaipal Singh. He submits that this shows that the said documents were subsequently created as an afterthought.

35. Lastly, Mr. Manan submits that in case this Court is not inclined to upset the judgment of the Trial Court convicting the appellant, he may be released by reducing the sentence to the undergone period. He submits that the appellant is a married man having young children and he has suffered on account of the trial, which prolonged for 18 long years.

36. On the other hand, Mr. Katyal has fully supported the impugned judgment. Mr. Katyal has firstly taken the court through the initial statement of PW1- the complainant given to the police, Ex.PW1/A. The complainant gave a detailed account of the armed robbery committed by, inter alia, the appellant. He, inter alia, stated that four boys aged about 20-22 years of medium height, of whom three were slim, one was strongly built, caught held of Anil and Aparna and entered the house. He then gave the description of the clothing worn by the four persons, and stated that two of them were having country made revolver, whereas two others were having knives in their hands. The knives were brandished by them and they said that everyone should go into one room, otherwise they would lose their lives. He also described about money kept in the suit/briefcase. The factum of the two boys having drunk water from the fridge and leaving the glasses on the fridge itself; of the said persons ransacking the house and removing the jewellery and clothing in a Big Jose bag; threatening the complainant and the other family members present against calling the police; about their taking away the briefcase containing Rs.7 Lakhs in cash and other documents, has been deposed to by the complainant, and other eyewitnesses/ family members of the complainant and there is no material inconsistency. Mr. Katyal submits that all the family members of the complainant and the complainant have been consistent in their testimonies with regard to the armed robbery.

37. Mr. Katyal submits that the time of the Tehrir recorded in Ex. PW-1/A is 07:15 p.m. on 06.06.1997. He submits that D.D. No.14A dated 06.06.1997 was registered at 07:25 p.m. Therefore, at about 07:25 p.m. the FIR (Ex.PW-12/A) stood registered and the crime team was called to the site. Thus, there was no scope for any manipulation since there was no time lag between the time when the son of the complainant reported the incident, and the police came into action.

38. Mr. Katyal has also drawn attention of the Court to Ex.17/D, which was the information furnished by PW-17 of P.S. Pushp Vihar to P.S. Greater Kailash regarding the arrest of the appellant in relation to the FIR No.547/1997 and that he disclosed himself to be involved in robbery at S164, Greater Kailash, New Delhi. This communication further informed that the accused were being produced on the date of this communication 06/ 07.06.1997 in the Court of Smt. Renu Bhatnagar, MM at 02:00 p.m. He has also referred to the cross-examination of PW-16 K.P. Malik. During his cross-examination, he stated that disclosure statement had been recorded at about 10:00 or 10:30 p.m, and he had informed SHO, PS-Greater Kailash at about 12 midnight.

39. Mr. Katyal submits that there is clinching and glaring evidence in the form of the report of the fingerprint expert (PW-9/A). The said report shows that the time of lifting of the finger prints was between 07:30 p.m. to 09:30 p.m., which is soon after the registration of the FIR. Once again, there was hardly any scope for any manipulation, or tampering in the fingerprint report (Ex.PW-9/A). The number of the FIR also has been mentioned in the original ink which shows that the FIR stood registered before the fingerprints were lifted before the preparation of PW-9/A. Mr. Katyal submits that as per the fingerprint expert report (Ex.PX), the chance prints marked Q7 and Q9, which were lifted from drinking glass No.1 were found to be identical with right middle and right thumb marks S4 and S3 respectively on the fingerprint impression prints of the Kishan Singh - the appellant. The chance prints marked Q8, Q11 & Q12 lifted from drinking glass No.1 (Q8) and drinking glass No.2 (Q11 & Q12) were found to be identical with the right thumb impression, right ring and right index finger mark S1, S5 and S2 respectively on the finger impression is also of Kishore. Mr. Katyal submits that the sample finger prints have been taken with due permission from the learned

Magistrate.

40. Mr. Katyal has referred to the testimony of PW-11, PW-14 and PW- 16 in relation to the apprehension of the appellant and Kishore (since deceased). PW-11 H.C. Surinder Pal Singh had, inter alia, stated that on 06.06.1997 at 05:20 p.m., he was present at P.P. Pushp Vihar along with SI Om Prakash. In the meantime, Constable Rajender Singh, Munshi of SI K.P. Malik informed that one constable had apprehended two boys in front of Birla school and police was called from the police post. On this information, SI K.P. Malik took PW-11, SI Om Prakash and Constable Anar Singh with him to the spot. At the spot, Constable Jai Pal Singh had apprehended two boys on a two-wheeler scooter No.DAM841. On interrogation of SI K.P. Malik, they revealed their names as Kishore and Kishan - the appellant. Kishore @ Toni was sitting on the driving seat and the other boy, namely, Kishan - the appellant was sitting on the pillion rider seat. Kishan was holding one briefcase. Both the boys were searched. Kishan was searched by SI K.P. Malik. On search, one desi revolver was recovered from the pant worn by Kishore from the right side dub of his pant and one desi katta was recovered from the right dub of the pant worn by Kishan - the appellant. Both the revolver and katta were having live cartridges inside. The briefcase was opened after taking the key. Currency notes were recovered, which were kept in that briefcase. Currency notes of 7 Lakhs were kept in 7 separate polythene bags each of them containing Rs.1 Lakh. Some bank documents were also recovered from the briefcase. All the articles recovered were kept in the same briefcase and Pulanda was prepared of the same briefcase. The same was taken into possession vide memo marked A. The said scooter was also taken into possession vide memo marked B.

41. PW-14 H.C. Jai Pal Singh, inter alia, deposed that he was posted at Malviya Nagar P.P. Pushp Vihar while returning one sample in respect of FIR No.494/1997 at Vikas Sadan, New Delhi, he reached at Sheikh Sarai red light when he saw a two-wheeler No.DAM841 on which two boys were sitting. Due to suspicious number of that scooter, he tried to stop them and by chasing them on his motorcycle but they turned towards Birla Vidya Niketan, Pushp Vihar. The scooter was stopped by putting the motorcycle ahead of the scooter and both were apprehended. They gave their names as Kishore @ Toni and Kishan. They were

identified by PW-14. He deposed that a public person had been sent to P.P. Pushp Vihar to inform I.C. P.P. Pushp Vihar to send some other police officer. After some time, SI K.P. Malik, SI Om Prakash, Head Constable Surinder Pal Singh, Constable Anar Singh reached there. The boys were apprehended and the formal search of the accused was taken and one country made pistol was recovered from Kishan - the appellant and a country made pistol was recovered from Kishore @ Toni. Both were having live cartridges. Kishore was driving the scooter while Kishan was sitting on the pillion seat having a light brown colour suitcase make VIP. The briefcase was recovered from Kishan and the key was recovered from Kishore. SI K.P. Singh opened the briefcase, which revealed polythene bag containing currency notes of Rs.50, 100 & 500. On being questioned, the two did not give any satisfactory reply and they were brought to P.P. Pushp Vihar along with the two-wheeler scooter and currency notes. On interrogation, both the appellant Kishan and Kishore disclosed that they had looted this amount/ robbed it from a Kothi in Greater Kailash and consequently, SI K.P. Singh counted the currency notes which were found to be Rs.7 Lakhs in toto kept in separate bags of Rs.1 lakh each in a briefcase. The briefcase also contained some bank papers kept in a badaami colour polythene. The disclosure statement of accused Kishore was exhibited as Ex.PW-14/A and that of the appellant Kishan as Ex. PW14/B.

42. PW16 SI K.P.Malik had, inter alia, deposed that he was the IO of the case FIR No.547/97 under Section 411 IPC of PS Malviya Nagar. He deposed that he was posted at PP Pushp Vihar, PS Malviya Nagar on 06.06.1997. He arrived at the spot of apprehension of the appellant Kishan and Kishore @ Toni (since deceased) upon receiving the information regarding their apprehension. He also deposed regarding the subsequent search of the accused persons and the recovery of one desi katta each, loaded with live cartridge, from the two accused Kishan and Kishore (since deceased) and the recovery of the briefcase/suitcase containing the amount of Rs. 7 Lakhs allegedly robbed in the present case. He also deposed that the currency notes were kept in separate polythene, each containing Rs. 1 Lakh. He deposed that some other documents relating to the transactions of banks like certificate of Bank of Baroda and other banks were also recovered from the briefcase/suitcase. He proved the seizure memo of the

briefcase/ suitcase, prepared in the case FIR No.547/97, as Ex. PW-14/C and the seizure memo of the scooter recovered from the two accused persons as Ex. PW-16/A43 Mr. Katyal submits that the testimonies of PW-11, PW-14 and PW-16 are consistent. The appellant has sought to make capital out of the fact that they had stated that the amount of Rs.7 Lakhs was in denomination of Rs.50, 100 & 500, whereas the currency notes produced before the Court were only of denomination of Rs.100 and 50. Mr. Katyal submits that the said discrepancy is minor and does not go to the root of the case of the prosecution. He points out that the seizure memo (Ex.PW14/E) is also in respect of the bank statement of Anoop Saxena PW-8, which was recovered from the briefcase. Both PW14 and PW16 had identified the seized currency notes of denomination Rs. 100/- as Ex.P-1/P-36 to P99 and Ex.P1/P100 to P-162 and the currency notes of denomination of Rs. 50/- were identified and exhibited as Ex.PW1/P8 to P-21, Ex.PW1/P22 to P35. These included the photocopies of the currency notes of both the denomination and a few original currency notes. Mr. Katyal submits that, even though, no currency note of the denomination of Rs. 500/- was produced or exhibited, the accused did not confront either PW14 or PW16 on the aforesaid discrepancy.

44. Mr. Katyal submits that the fact that the appellant refused to participate in the TIP proceedings in respect of the other eye witnesses, apart from PW-1, is also an incriminating circumstance. He points out that PW-1 identified the appellant in Court during his examination-in-chief conducted on 05.05.1999. The appellant was also identified by PW-1 during his cross- examination by the appellant/ accused Kishan Singh on 06.05.1999. Mr. Katyal submits that the appellant claimed that he had been shown to PW-1 and PW-8 in the Police Station, who went to the Police Station to identify the articles. However, the appellant refused to join the TIP proceedings even by the other eye-witnesses.

45. Mr. Katyal submits that PW-2, PW-3 and PW-4 are consistent in their testimonies and corroborate the testimony of PW-1. Even PW-5 is largely consistent in her testimony with the testimonies of the other eye-witnesses. However, PW-5 being 13-year old girl, a few contradictions were bound to creep in, which are not material. Mr. Katyal submits that PW-2 identified the appellant accused on 24.04.2000 in the Court. During her cross- examination by counsel for

the accused Kishan and Haroon, PW-2 had stated that she had seen the accused persons only at the time of the incident, and after that on 24.04.2000 when her statement was recorded. On her cross-examination by counsel for the accused Gullu, PW-2 stated that she never visited the Police Station after the incident. She also stated that the Police never brought the accused persons to her house. During her cross-examination by counsel for the appellant Kishan, she denied the suggestion that she had not seen the accused Kishan or that, for the first time, she had identified the accused Kishan at the instance of Police in the Court.

46. The testimony of PW-3 has also been relied upon by Mr. Katyal. PW-3 also identified the accused persons in the Court during her examination-in-chief recorded on 27.09.2000. Mr. Katyal submits that it was on the disclosure of the appellant Kishan, that the accused Gullu was arrested on 08.06.1997 and Haroon was arrested on 09.06.1997.

47. He has also referred to Ex.PW-17/M, which is the seizure memo in respect of the items recovered at the behest of accused Gullu, and Ex.PW17/L dated 11.06.1997, which is the seizure memo in respect of the articles recovered at the behest of Haroon. Mr. Katyal submits that the factum of involvement of Gullu and Haroon was within the special knowledge of the appellant Kishan, and at the instance of both these accused, recoveries have been made of the stolen properties. Mr. Katyal has also drawn the attention of the Court to the TIP proceedings in respect of the recovered articles consisting of wrist watches, gold rings and gold bangles. The case properties were correctly identified by Smt. Smita (PW-2) and Sh. Rajiv Saxena (PW-7). Mr. Katyal submits that neither in the cross-examination of PW-2, nor in the cross-examination of PW-7, any suggestion was given that they had seen the items identified by them in the Police Station prior to their TIP of the case properties. Thus, the TIP has gone unrebutted.

48. Mr. Katyal submits that the public witness, who witnessed the apprehension of the accused Kishan and Kishore had left the Police Station after informing about the apprehension of the said accused by PW-14 without leaving any particulars or details. Therefore, there was no way that the prosecution could have produced him as a witness. Mr. Katyal submits that his non-production is, in any event, not

fatal to the case of the prosecution in the face of overwhelming evidence incriminating the appellant/ accused in the office in question.

49. Mr. Katyal further submits that while recording the statement of the appellant under Section 313 Cr.P.C. vide Question No.26, he was specifically confronted with the finger print report (Ex.PW-9/A), which established the presence of his finger prints at the spot of the crime. However, the appellant did not explain the said incriminating circumstance and merely responded by saying I do not know. Mr. Katyal submits that it was for the appellant to explain the said circumstance, and his failure to do so, is a strong circumstance pointing towards the involvement of the appellant in the crime. Mr. Katyal has also referred to the answer given by the appellant to the last question - being Question No.75, when he was given the opportunity to say anything that he wished to, in the matter. He merely stated that he is innocent and he was falsely implicated in the case and he has not committed any offence, as alleged by the prosecution. He stated that he had been involved in another false case being FIR No.547/1997 under the Arms Act by the IO SI K.P. Malik, and in that case he had been acquitted on 26.09.1998. Thus, the appellant failed to explain as to why the complainant and his family members implicated the appellant; how he came to be identified by the eye-witnesses to the crime; how his finger prints were found at the scene of the crime; how recovery was made on his disclosure from accused Haroon and accused Gullu; how the briefcase/ suitcase was recovered from him which, apart from containing the cash of Rs.7 Lakhs, also contain documents relating to the complainants family members.

50. The submission of Mr. Manan that non-examination of the servant Anil Kumar by the prosecution puts in doubt the case of the prosecution, has no merit. According to the case of the prosecution, apart from servant Anil Kumar, several other family members of the complainant (PW-1) had witnessed the entire incident relating to the commission of the offence. The prosecution has examined five family members, including PW-1 - the complainant, in support of their case. It was not essential that the servant of the complainant be also examined. It cannot be said that he was the only eye-witness, or the star witness of the prosecution, such that the failure to examine him would defeat the case of the prosecution.

51. I may refer to Nand Kumar Vs. State of Chhattisgarh, (2015) 1 SCC776 wherein it has been held by the Supreme Court that it is not necessary for the prosecution to examine each and every witness to establish its case. What is essential is that the entire sequence of events, which constitute the offence, should be established by leading cogent evidence. Pertinently, the accused did not lead any evidence.

52. The submission of Mr. Manan that the refusal of the appellant to join the TIP has wrongly been considered as an incriminating circumstance, because the appellant had been shown to the complainant in the Police Station, also has no merit. This is for the reason that the appellant refused to join the TIP proceedings, even in relation to the other eye-witnesses relied upon by the prosecution, namely, PW-2 Smita Saxena, PW-3 Mithlesh, PW4 Monika and PW-5 Arpana. It was not his case that he had been shown even to these eye-witnesses prior to the TIP conducted by them. Thus, the refusal of the appellant to join the TIP was not justified and is an incriminating circumstance, as rightly held by the Trial Court.

53. The submission of Mr. Manan that there is a contradiction in the case of the prosecution, insofar as denomination of the currency notes of Rs.7 Lakhs allegedly recovered from the appellant and the co-accused Kishore was recorded as Rs.50, Rs.100 and Rs.500, whereas the currency notes produced only consisted of 14 bundles of Rs.50 each and 63 bundles of Rs.100 each and that there was no currency note of the denomination of Rs.500, also has no merit.

54. In my view, the said discrepancy is not material for a couple of reasons. Firstly, PW-14 and PW-16 identified the currency notes of denomination of Rs.100 as Ex.P-1/P-36 to P-99 and Ex.P-1/P-100 to P-162 and the currency notes of denomination of Rs.50 were identified and exhibited as Ex.PW-1/P-8 to P-21 and PW-1/P-22 to 35. The currency notes, as produced before the Court, aggregated to Rs.7 Lakhs. Pertinently, even though no currency note of the denomination of Rs.500 was produced or exhibited, the accused did not confront or question either PW-14 and PW16 on the said discrepancy. Had they been put to question, they would have explained the apparent discrepancy in the recording of the recovered currency notes of three denominations, i.e. Rs.50, Rs.100 and Rs.500 and not just

two denominations of Rs.50 and Rs.100.

55. Secondly, from the briefcase recovered from the appellant/accused, the bank statement of Anoop Saxena, PW-8 was also recovered. The error/irregularity in noting the denomination of the currency notes on the part of the police personnel is a procedural irregularity, which does not impinge on the case of the prosecution. Pertinently, apart from generally recording that the currency notes of Rs.50, 100 and 500 denomination were found, the police did not record a break up of the number of currency notes of each of these denominations. It is the case of the prosecution that the currency notes were wrapped in polythene bags. The same could also have led to the visibility/transparency of the notes being blurred, leading to the impression that the bundles consist of three denominations, and not just two denominations of Rs.50 and Rs.100.

56. The discrepancy in relation to the denomination of the currency notes, which has emerged in the testimonies of the prosecution witnesses, could also be on account of loss of memory with passage of time. The incident in question is of 06.06.1997. The official prosecution witnesses were examined on or after 23.01.2001. Ct. Inder Sen (PW-6) was examined on 23.01.2001. ASI Kuldeep Singh (PW-9) and Ct. Naresh Kumar (PW-10) who was examined on 22.10.2001, HC Surender Pal Singh (PW-11) was examined on 05.12.2001, ASI Chandra Mani (PW-12) was examined on 11.01.2002, HC Jai Pal Singh (PW-14) was examined on 11.01.2002 and his examination went on till 23.10.2002. HC Sudesh (PW-15) was examined thereafter, and SI K P Malik (PW-16) was examined on 15.05.2003. His examination was completed on 24.11.2006. SI Rishi Pal Singh (PW-17) was examined on 12.09.2003 and the examination continued till 25.09.2004. With the passage of time, the memories of these witnesses could only have dimmed. It has come in the evidence of several prosecution witnesses (PW1, 2, 3, and

4) that a sum of Rs.7 Lakhs had been withdrawn from the bank for disbursement of salaries. Thus, there is no reason to disbelieve the case of the prosecution, merely because some discrepancy may have crept into the recording the denomination of the currency notes which were recovered.

57. There is no merit in the submission of Mr. Manan that it was essential for the prosecution to establish that the jewellery in question had been purchased by the complainant and his family members. Pertinently, the said jewellery items had been identified by the prosecution witnesses. In fact, the jewellery items were recovered upon the disclosures made by the accused. There is no basis for the appellant to claim that the complainant had been shown the jewellery by taking out the same from the Malkhana.

58. Merely because the public witness before whom the appellant and co-accused Kishore were apprehended had not been produced, their apprehension cannot be doubted. The reason for the same has been explained by the prosecution. The person/informant at the police post/station had left the police station after informing that the appellant and Kishore (deceased) had been detained by PW-14, without leaving any particulars of his identity or address. There was hardly any time lag between commission of the offence in question; registration of the FIR; the apprehension of the accused/ appellant by the police of a different Police Station (PP Pushp Vihar, PS - Malviya Nagar), and consequent recovery made from him and the co-accused Kishore. There was no way that the police personnel at PP Pushp Vihar, PS - Malviya Nagar would have learnt of the offence committed by the accused within the jurisdiction of Police Station Greater Kailash-I on the same day, unless the same was disclosed by the accused/ appellant during their interrogation by the police personnel of PS - Malviya Nagar.

59. I also find no merit in the submission of Mr. Manan that the circumstances in which the appellant and Kishore (deceased) were apprehended were themselves doubtful. It was not essential for PW-14 to establish the case particulars of the case pertaining to which he had gone to deposit the samples. Pertinently, PW-14 had stated that he had gone to deposit a sample regarding case FIR No.494/1997 at Vikas Sadan, New Delhi. Therefore, he had given sufficient detail with regard to the place from where he was returning. PW-14 stated that while returning to Pushp Vihar via Chirag Delhi near the Sheikh Sarai Red Light, he had seen appellant and the co-accused Kishore on the scooter with suspicious number. When he tried to stop them, they fled. Ultimately, they were stopped by obstructing their scooter. The testimony of PW-14 in this regard is completely believable. The testimony of

PW-14 is consistent with that of SI K P Malik (PW-16), SI Om Prakash and HC Surender Pal Singh (PW-11) and his statement stands corroborated. PW-14 withstood the cross- examination and his testimony in chief could not be shaken.

60. The discrepancy pointed out by Mr. Manan in the testimony of PW-5 with regard to the apprehension of the accused by the chowkidar is of no consequence. PW-5 was a young girl at the time of incident. She was about 10 years of age when the crime took place. Her statement was recorded on 22.01.2001, i.e. after about 3 years of the incident taking place. The discrepancy is not material and has to be ignored. The consistent case of the prosecution, which stands duly corroborated by documentary as well as oral evidence, is that the appellant and Kishore (deceased) had been apprehended by PW-14 within the jurisdiction of PS-Malviya Nagar.

61. Similarly, the discrepancy in the statement of PW-2, insofar as she stated that the briefcase was opened with the help of a knife, and the statement of PW-4 who stated that the briefcase was not locked, is neither here nor there. The same is the result of inaccurate recollection of facts. One cannot lose sight of the fact that at the time of the incident, the said eye- witnesses would have been under tremendous fear and, therefore, their concern would have been to save their lives and the lives of their family members present in the house. They may, or may not have noticed each and every detail with regard to the acts and omissions of the accused. It could also be the case of the two witnesses seeing the same situation at different points of time, and deposing according to their recollection of the incident, as it happened in their presence.

62. Similarly, the discrepancy pointed out in relation to the same aspect in the statement of PW-14 is of no avail. In fact, the testimony of PW-14 and PW-16 shows that the statement of PW-4 - that the briefcase was not locked, was correct version. It is evident that the key of the briefcase was in the briefcase itself, and that is how the same came to be recovered by PW-14 and PW-16.

63. Mr. Manans submission that the appellant was not specifically identified by the eye-witnesses, namely PW-2, PW-3, PW-4 and PW-5, has no merit. PW-2 identified the accused as the person who had put the knife at the neck of Aparna

(PW-5). She also identified the persons who opened her Almirah, which included the appellant. PW-3 also identified all the accused persons who were present in Court - which included the appellant, and similarly, they were identified by PW-4 and PW-5. The appellant cannot take advantage of the manner in which the statements have been recorded by the Court. The Court, instead of recording that the witnesses have identified each of the accused individually, has recorded that the accused have been identified. Such recording only means that the accused were identified individually, and the identification does not become vague because of such recording. Pertinently, the appellant had refused to join the TIP by the eye-witnesses on the specious ground which has already been rejected.

64. The statement of PW-8 relied upon by Mr. Manan, wherein he stated that he and PW-7 had gone to PS - Malviya Nagar for identification of the robbed articles, is neither here nor there. The robbed articles are identified by the concerned prosecution witnesses apart from PW-7 and PW-8 as well.

65. There is no requirement that the Jama Talashi of the appellant (Ex. PW-16/B) should have been signed by both Surender Pal Singh (PW-11) and Jaipal Singh (PW-14), merely because the seizure memo in respect of the scooter (Ex. PW-16/A) had been signed by the said two witnesses. I do not agree that the absence of the signature of HC Jaipal Singh (PW-14) on the Jama Talashi of the appellant (Ex. PW-16/B) casts a doubt that the same may have been created later, as an afterthought.

66. In the present case, the guilt of the appellant has been established to the hilt. There is clinching evidence of the involvement of the appellant in the crime in question. His fingerprints were lifted from the site, and that too, without any delay and the same have matched. The fingerprints were lifted on the same day, i.e. 06.06.1997 between 07:30 pm and 09:30 pm from the scene of the crime. The appellant did not explain the circumstances in which his fingerprints were lifted at the crime site on the glass which was used by him to drink water. The appellant also failed to join the TIP by the eye-witnesses to the crime on the specious plea that he had been shown to one of the prosecution witnesses. He has not explained as to why he did not join the TIP by the other witnesses, apart from PW-1. The

timeline pointed out by Mr. Katyal itself shows that the developments in the case took place in quick succession. There was hardly any time for planting the case on the appellant falsely. The first complaint was made by PW-7 at 5:15 p.m. The rukka was prepared at 07:15 pm. The FIR was registered at 07:25 pm. The appellant and Kishore (deceased) were apprehended at about 5:00 pm at P.S. Malviya Nagar, and the fingerprints were lifted from the crime scene between 07:30 pm and 9:30 pm. Moreover, there is no reason disclosed by the appellant as to why he should have been victimised by the police as well as by the victim (PW-1) and his family members, if he was not so involved. The victims would not have unjustifiably implicated the appellant, for no rhyme or reason, and allowed the real culprits to get away. It is not the appellants case that he knew PW1 or his family members from before, or that they harboured any animosity towards him. It is also pertinent to note that on the disclosure statement of the accused/ appellant the other co-accused Kishore (deceased), Gullu & Haroon were apprehended and recoveries were made from them of the stolen property. Involvement of Gullu & Haroon was within the special knowledge of the appellant Kishan. This also is an incriminating circumstance qua the appellant.

67. Reliance placed by Mr. Manan on the acquittal of the appellant in case FIR No.549/1997 has no bearing in the present case. A perusal of the said judgment shows that the appellant was acquitted in the said case by giving him the benefit of doubt, for the reason that no public witness had been joined when the recovery of the Arms was made from the appellant accused. In this regard, reliance was placed, inter alia, on 1988 (2) RCR421 There is no law report with the said citation. On my own research, it appears the Court had relied on 1989 (95) Cr. L.J127 That was a case, where the independent witnesses were available, and could have been associated. However, the judgment in case FIR No.549/1997 shows that PW-10 (in case FIR No.549/19) had stated in his cross-examination that the spot was a lonely place and there was no public person, therefore, the police could not ask anyone to join the raiding party. The Supreme Court has held in Kaka Singh v. State of Haryana, (1997) SCC (Cri) 214 and Pramod Kumar v. State (GNCT of Delhi), (2013) 6 SCC588 that merely because a public witness may not have been associated with the recovery made from the accused - due to their non-availability, the case of the prosecution could not be doubted.

68. In the present case, there are several other incriminating circumstances which clearly implicate the appellant and do not create any doubt with regard to the apprehension of the appellant in the manner claimed by the prosecution. Firstly, at the time of apprehension, not only the illegal Arms but cash of Rs. 7 Lakhs and other documents of the family members of the complainant were recovered (the bank statement/insurance papers of PW-8). Secondly, the appellant had been apprehended in close proximity of the commission of the offence in question. Thirdly, the appellant did not join the TIP proceedings. Fourthly, on the disclosure of the appellant, the other two accused Gullu & Haroon were apprehended and recovery of the robbed jewellery was affected. Thus, the judgment of acquittal in case FIR No.549/1997 under Sections 25/54/59 of the Arms Act is of no relevance to the present case.

69. The submission of Mr. Manan that the circumstance that the glass wherefrom the fingerprints of the appellant were lifted - which the appellant allegedly used to drink water while committing the armed robbery was not seized, creates a doubt in the case of the prosecution, also has no merit. Pertinently, the proceedings for lifting of the fingerprints were undertaken vide Ex. PW9/A between 07:30 pm and 09:30 pm. This was in close proximity of time with the commission of the offence and the apprehension of the accused in another case, at another location falling within the jurisdiction of another Police Station falling with the PS - Malviya Nagar. Pertinently, the accused when confronted with the fingerprint expert report, while recording his statement under Section 313 Cr.P.C., did not offer any explanation and merely stated that he did not know as to how his fingerprints were found at the scene of the crime. He had the opportunity to explain the said circumstance, which he did not avail of. It was not his defence that he was made to handle the glass after his apprehension at P.S. Malviya Nagar. Consequently, there is no merit in this submission as well.

70. For all the aforesaid reasons, I do not find any merit in this appeal. There is no reason to upset the well-analysed and well-reasoned judgment of the Trial Court convicting the appellant. The prosecution has been able to bring home the charge against the appellant to the hilt. The minor discrepancies pointed out in the case of the prosecution do not go to the root of their case, and do not create any doubt in

the mind of this Court with regard to the involvement of the appellant in the said crime. Consequently, the appeal is liable to be dismissed.

71. So far as the aspect of sentence is concerned, I am not inclined to reduce the sentence to the period already undergone. The offence committed by the appellant along with his accomplice is an extremely serious one. Such offences, when committed, shake the confidence of the public in the law & order situation in the society and instil fear and uncertainty in the minds of the victim. The offence was committed in a pre-meditated manner by the appellant and his accomplices, and they were armed with dangerous weapons while committing the robbery in cold blood.

72. Consequently, I find no merit in this appeal and dismiss the same. The appellant shall forthwith surrender to undergo the remaining sentence. (VIPIN SANGHI) JUDGE JULY17 2015

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